

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 236

**THE GOODYEAR TIRE & RUBBER COMPANY,
PETITIONER,**

vs.

FEDERAL TRADE COMMISSION.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

**PETITION FOR CERTIORARI FILED JULY 17, 1964
CERTIORARI GRANTED DECEMBER 14, 1964**

VOL. I, pp. 1 to 852

In the
United States Court of Appeals
For the Seventh Circuit

No. 13339

**THE GOODYEAR TIRE & RUBBER
COMPANY,**

vs.

FEDERAL TRADE COMMISSION,

Petitioner,
Respondent.

*Petition to Review and Set
Aside Order of the Fed-
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RESPONDENT'S EXHIBITS.

- 1—Atlantic Lease Form B-3191, 8-54, signed by John Chambers and J. O. Estlow3645
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Judgment	3696	3697
Final decree affirming and enforcing order to cease and desist	3697	3698
Order allowing certiorari	3700	3699

APPENDIX.

SUMMARY OF PROCEEDINGS BELOW

1956

Jan. 11—Original complaint issued against The Goodyear Tire & Rubber Company and The Atlantic Refining Company.

Apr. 16—Answers filed by The Goodyear Tire & Rubber Company and The Atlantic Refining Company.

Apr. 30—Motion filed by counsel supporting the complaint to amend the complaint by making The Goodyear Tire & Rubber Company, Inc.* an additional party respondent.

May 22—Order Amending Complaint filed by the Hearing Examiner.

July 6—Answers to the complaint as amended filed by Respondents.

Sept. 17—Pretrial conference in Washington, D.C. before Hearing Examiner Kolb.

Sept. 26—Counsel supporting the complaint filed motions to the Hearing Examiner to certify the proceeding to the Commission and to the Commission to affirm and modify the Hearing Examiner's Order Amending Complaint.

Oct. 8—Memorandum filed by Goodyear in opposition to motions of Sept. 26.

Oct. 11—Order filed by Hearing Examiner granting Sept. 26 motion of counsel supporting the complaint for certification of the proceeding to the Commission.

Oct. 26—The Commission issued its Order Affirming Hearing Examiner's Order Amending Complaint.

*The Goodyear Tire & Rubber Company, Inc. was a wholly-owned subsidiary of The Goodyear Tire & Rubber Company which since 1956 has been merged into its parent company. Both companies are hereinafter referred to collectively as "Goodyear", and The Atlantic Refining Company is hereinafter referred to as "Atlantic".

Summary of Proceedings Below.

Oct. 29—Pretrial conference held in Washington, D.C. before Hearing Examiner Kolb.

Oct. 30—Pretrial conference held in Washington, D.C. before Hearing Examiner Kolb.

Oct. 30—Initial hearing held in Washington, D.C. before Hearing Examiner Kolb.

Nov. 9—Interlocutory Appeal Brief filed by counsel supporting the complaint appealing a ruling made by the Hearing Examiner at initial hearing on October 30, 1956 rejecting certain evidence.

Nov. 26—Answer to Interlocutory Appeal filed by Atlantic.

Nov. 26—Answering brief in opposition to Interlocutory Appeal filed by Goodyear.

Dec. 5—The Commission's Order Sustaining Interlocutory Appeal issued.

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Mar. 7-Dec. 12*—Hearings for presentation of evidence by counsel supporting the complaint held before Hearing Examiner Kolb.

Dec. 2—Motion filed by Goodyear to withdraw issues and to strike evidence with respect to the Goodyear-Shell Oil Company Sales Commission Plan.

Dec. 12—Answer in opposition to Goodyear motion of December 2 filed by counsel supporting the complaint.

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Jan. 2—Hearing Examiner's order denying motion of Goodyear to withdraw issues and to strike evidence filed.

Jan. 4—Order of the Hearing Examiner Closing the Case for the Taking of Testimony in Support of the Complaint and Fixing Time Within Which to File Motions, filed.

Jan. 31—Interlocutory Appeal to the Hearing Examiner's Order of January 2, filed by Goodyear.

*Hearings were conducted in Washington, D.C., Philadelphia, Pa., Wilmington, Del. and Baltimore, Md. on the following dates within this period: Mar. 7, June 13, 14, 24, 25, 26, 27, 28, July 1, 2, 3, Nov. 18, 19, 20, 21, 26, 27 and Dec. 12.

Feb. 12—Answer in Opposition to January 31 Interlocutory Appeal of Goodyear filed by counsel supporting the complaint.

Feb. 19—Motion filed by Atlantic to Strike Evidence Received Subject to Atlantic's Motion to Strike or Over Atlantic's Objection.

Feb. 19—Motion filed by Atlantic with respect to Firestone issues.

Feb. 17—Motion to strike evidence filed by Goodyear.

Mar. 3—Counsel supporting the complaint filed answer in opposition to Atlantic's motion of February 17, 1958.

Mar. 7—Counsel supporting the complaint filed an answer in opposition to Atlantic's motion of February 14, 1958.

Mar. 7—Counsel supporting the complaint filed an answer in opposition to Goodyear's motion of February 17, 1958.

Mar. 21—The Commission issued Order Denying Interlocutory Appeal filed by Goodyear January 31.

Mar. 24—The Hearing Examiner filed an order denying Atlantic's motion filed February 17 relating to Firestone issues.

Mar. 24—The Hearing Examiner filed an order disposing of Atlantic's motion of February 14.

Mar. 24—The Hearing Examiner issued an order denying in part and granting in part Goodyear's motion of February 17.

June 30-Nov. 19*—Defense hearings held before Hearing Examiner Kolb.

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Apr. 1—Proposed Findings of Fact, Conclusion of Law and Order filed by counsel supporting the complaint.

June 15—Proposed Findings of Fact and Conclusions filed by Goodyear.

*Hearings were conducted in Baltimore, Md., Washington, D.C. and Philadelphia, Pa. on the following dates within this period: June 30, July 1, 2, 3, 8, 9, 11 and Nov. 5, 6, 7, 17, 18, 19. On the final day counsel supporting the complaint called on rebuttal witness and Respondent Atlantic one sur-rebuttal witness. Respondent Goodyear called no witnesses.

Summary of Proceedings Below.

June 15—Proposed Findings of Fact and Conclusions and Brief in support thereof filed by Atlantic.

July 31—Reply Brief filed by counsel supporting the complaint.

Oct. 21—Hearing Examiner entered Order closing all proceedings before the Hearing Examiner.

Oct. 23—The Hearing Examiner's Initial Decision filed (served on Goodyear on November 16, 1959).

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Apr. 22—Appeal Brief of counsel supporting the complaint filed.

Apr. 22—Appeal Brief of Atlantic filed.

May 25—Answering Brief of counsel supporting the complaint filed.

May 25—Answering Brief of Goodyear filed.

May 25—Answering Brief of Atlantic filed.

June 23—Oral argument before the Federal Trade Commission.

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Mar. 14—The Federal Trade Commission's Opinion and Order served on Goodyear.

Apr. 21—Motion to Suspend Effective Date of Final Order filed by Goodyear.

Apr. 21—Motion to Postpone Effective Date of Commission's Final Order filed by Atlantic.

Apr. 28—Counsel supporting the complaint filed Answer to Separate Motions of Respondents to Stay Effective Date of Order to Cease and Desist Herein.

May 10—Petition to Review and Set Aside Order of the Federal Trade Commission filed by Goodyear.

May 26—Federal Trade Commission issued order denying motions by Goodyear and Atlantic to suspend the effective date of the Final Order.

July 26—Federal Trade Commission issued Order Granting Motion to Correct Transcript.

*Commissioners: Earl W. Kintner, Chairman, Robert T. Secrest, Sigurd Anderson and William C. Kern. Commissioner Tait did not sit.

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UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

In the Matter of

The Goodyear Tire & Rubber Company, The Goodyear Tire & Rubber Company, Inc., and The Atlantic Refining Company, corporations.

Docket No. 6486

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Goodyear Tire & Rubber Company, The Goodyear Tire & Rubber Company, Inc. and The Atlantic Refining Company, hereinafter referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Section 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint stating its charges as follows:

Paragraph One: Respondent, The Goodyear Tire & Rubber Company (hereinafter sometimes referred to as "Goodyear"), is a corporation organized, existing and doing business under the laws of the State of Ohio, with its principal office and place of business located at 1144 East Market Street, Akron, Ohio. Goodyear operates its business directly and through several wholly owned or controlled subsidiaries, including The Goodyear Tire & Rubber Company, Inc., which is primarily a marketing subsidiary.

Respondent, The Goodyear Tire & Rubber Company, Inc. (hereinafter sometimes referred to as "Goodyear, Inc."),

is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal office and place of business located at 1144 East Market Street, Akron, Ohio. Goodyear, Inc. is a wholly owned subsidiary of Goodyear, engaging, among other things, in the sale of the latter's products. The principal officers of Goodyear and Goodyear, Inc. are the same and the two companies share the same principal office and place of business. Goodyear, Inc. is operated under the control and direction of Goodyear and is used as an instrument by the latter primarily for marketing purposes. All of the acts of Goodyear, Inc. referred to in this complaint were for and in behalf of Goodyear.

38 Respondent, The Atlantic Refining Company, (hereinafter sometimes referred to as "Atlantic"), is a corporation organized, existing and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at 260 South Board Street, Philadelphia, Pennsylvania.

Paragraph Two: Goodyear is the largest manufacturer of rubber products in the United States, manufacturing a variety of rubber and associated products, including tires and inner tubes. The total net sales of Goodyear made directly and through its subsidiaries were more than one billion dollars in 1954.

Goodyear, Inc. sells various products manufactured by Goodyear, including tires and inner tubes. It also purchases for resale and distribution batteries, automotive parts and accessories and other items referred to as Car and Home Merchandise. Said products are sold directly to the consuming public through approximately 500 company owned and operated retail outlets, and to other retailers and wholesalers having places of business located in the various States of the United States.

Certain of said products, namely, tires, inner tubes,

batteries, automotive parts and accessories, and certain Car and Home Merchandise items, are known in the trade as "TBA" products (an abbreviation for tires, batteries and accessories) and will hereinafter be so referred to in this complaint.

Paragraph Three: Atlantic is a large producer and distributor of petroleum products. Directly or through its wholly owned or controlled subsidiaries, Atlantic is engaged in substantially all branches of the petroleum industry. It produces crude oil from its wells, cracks and refines gasoline, and refines and produces lubricants and a wide range of other petroleum products. Sales of said products are made to many types of customers, including petroleum wholesalers (hereinafter referred to as "distributors") and service stations. In 1954 its sales and operating revenue totaled more than one-half billion dollars. Atlantic also acts as an agent in promoting the sale of the TBA products of certain companies, including those of respondent Goodyear, Inc., in the manner hereinafter described.

Paragraph Four: In the course and conduct of their said businesses respondents are now and for many years have been engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that they ship said products, including said TBA products, or cause them to be shipped, from the States in which said products are manufactured or warehoused to purchasers thereof located in other States of the United States and the District of Columbia.

Paragraph Five: In the course and conduct of their said business of promoting and selling TBA products in commerce, respondents are now and for many years have been engaged in competition with other corporations, partnerships, individuals and firms.

39 Paragraph Six: Goodyear, Inc. sells said TBA products directly and through wholesalers to many

classes of customers, including service stations who purchase for resale to consumers for replacement use in their automobiles. Service stations, by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They constitute a large and increasingly important market for TBA products.

Atlantic sells its petroleum products, directly and through distributors, to more than 10,000 service stations. In addition to petroleum products, a substantial number of these stations sell TBA products.

Paragraph Seven: In connection with the sale of TBA products in commerce, Goodyear, Inc. has entered into a contract with Atlantic under which Atlantic agrees to promote the sale of said TBA products to the service stations and distributors selling Atlantic's petroleum products in part of its sales territory. Atlantic has also entered into a substantially similar agreement with the Firestone Tire & Rubber Company (hereinafter referred to as Firestone) as to the stations and distributors selling its petroleum products in the remainder of its sales territory.

Under said contract Goodyear, Inc. pays Atlantic an "override" commission, ranging from 7½% to 10% on the net sales of TBA products to service stations and distributors selling Atlantic's petroleum products, in return for the influence and aid given by Atlantic in promoting said sales. Atlantic has a large number of service stations and distributors affiliated with it which sell only its petroleum products and, pursuant to its agreements with Goodyear, Inc. and Firestone, in various ways, urges, recommends and persuades the operators of these outlets to purchase the TBA products of Goodyear, Inc. and Firestone. Said stations and distributors at no time authorized or requested Atlantic to find for them, or commit them to, a source of supply for TBA products. Said stations and

distributors do not receive any part of the override commission.

Said service stations and distributors are operated ostensibly as independently owned business enterprises. However, their relationship with Atlantic is such that they are subject to its control. Such control is inherent in the power Atlantic has by virtue of the various types of contracts of employment, leases, purchase contracts, credit card contracts, franchises and other agreements between it and said service stations and distributors with respect to petroleum products and the occupancy, operation, use and tenure of the stations, other premises, facilities and equipment. Said agreements are for short terms and may be terminated or cancelled by Atlantic without reason at the end of the term or prior thereto for non-performance of certain provisions. Some of said provisions are so broad and general as to be susceptible of arbitrary interpretation and thus afford a basis for termination of the agreement by Atlantic.

Thus, the economic welfare of said service stations and distributors is largely dependent upon Atlantic. If Atlantic chooses, for whatever reason or no reason, to terminate said franchise or other agreements, the operator of the service station or distributor either loses his business entirely or must change to a different brand of petroleum products or change location or both, depending upon the type of lease arrangement involved. Such termination would result in great financial loss and irreparable injury to the operator, such as loss of his business, customer goodwill, sales, profits, and cost of relocation.

By virtue of these circumstances, Atlantic can greatly influence and control the purchasing and marketing activities of said service stations and distributors. Such influence and control has been and is being exercised by Atlantic over its affiliated service stations and distributors

by recommending, urging, persuading and causing them to purchase a substantial quantity of TBA products from Goodyear, Inc. and Firestone, the sellers designated by it.

Paragraph Eight: By virtue of said override commission agreement which Atlantic has entered into with Goodyear, Inc., the latter has sold substantial quantities of TBA products in commerce to said service stations and distributors. Goodyear, Inc. has been increasingly successful in selling TBA products to said service station and distributor market controlled by Atlantic. For example, Goodyear, Inc. made such sales, under said agreement, amounting to \$2,445,808 in 1951 and \$4,175,890 in 1952, on which it paid Atlantic commissions of \$239,250 and \$411,743, respectively, for those years.

Also, under the agreement between the Atlantic and Firestone, as described hereinbefore, the latter has sold substantial quantities of TBA products to said service stations and distributors. Firestone made such sales amounting to \$3,809,843 in its fiscal year 1952 and \$4,796,304 in its fiscal year 1953, on which it paid Atlantic commissions of \$354,354 and \$446,286, respectively, for those years.

Paragraph Nine: In addition, Goodyear, Inc. has entered into the same or a substantially similar override agreement with other oil companies, including the Shell Oil Company. Said oil companies exercise control over the service stations and distributors which purchase their petroleum products in the same manner and for the same reasons as hereinabove alleged as to Atlantic. By virtue

of said agreements, Goodyear, Inc. has been and is 41 increasingly successful in selling TBA products to the service station and distributor market controlled by said oil companies. For example, under such an agreement, Goodyear, Inc. made sales amounting to \$11,857,287 in 1951, and \$16,595,761 in 1952, on which it paid the Shell

Oil Company commissions of \$1,091,385 and \$1,523,122, respectively, for those years.

Paragraph Ten: Many competitors of Goodyear, Inc. and Firestone are unable to sell their TBA products to a substantial number of said distributors and service stations because of said override agreements. Many of these competitors do not pay override commissions to any oil company.

Paragraph Eleven: Among the effects of the adoption and use by respondents of said override commission agreements, and each of them, under the circumstances and in the manner hereinabove alleged are that they have:

1. Foreclosed a large and substantial amount of business to manufacturers, distributors, wholesalers and other vendors who compete with Goodyear, Inc. and Firestone in the sale of TBA products.
2. Injured, lessened, prevented and destroyed competition between Goodyear, Inc. and Firestone and between each of them and other manufacturers, distributors, wholesalers and other vendors of TBA products in the sale of said products.
3. Increased substantially the amount of TBA products business done by Goodyear, Inc. and Firestone.
4. Deprived a substantial number of petroleum distributors and service station operators of their right to act as independent businessmen by denying them freedom of choice as to the TBA products which they may purchase and stock for resale.
5. Deprived the consuming public of equal access to the TBA products of competitors of Goodyear, Inc. and Firestone and other advantages which would result from the natural and unobstructed flow of commerce in said products under conditions of free competition.

Amended Complaint.

42 Paragraph Twelve: Said agreements between respondents and said agreements between a respondent and others not parties herein, and the acts and practices of respondents thereunder, as hereinabove alleged, are all to the prejudice of the public, have a dangerous tendency to and have unduly frustrated, hindered, suppressed, lessened, restrained, prevented and eliminated competition in the sale of TBA products in commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products; and constitute unfair methods of competition and unfair acts and practices, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

43. Enclosure B—List of Specific Changes Made By
Amended Complaint.

1. The name of respondent The Goodyear Tire & Rubber Company, Inc. is added to the caption of the complaint and is also added in the fourth line of the first unnumbered paragraph of the complaint.

2. A paragraph describing respondent The Goodyear Tire & Rubber Company, Inc. has been added as subparagraph 2 of Paragraph One of the complaint.

3. Paragraph Two of the complaint has been rewritten as now appears in the amended complaint.

4. In Paragraphs Three, Six, Seven, Eight, Nine, Ten and Eleven, wherever the name Goodyear appeared in the original complaint the name Goodyear, Inc. has been substituted in the amended complaint.

5. In Paragraph Seven of the amended complaint the first sentence has been changed to read as follows:

“In connection with the sale of TBA products in commerce, Goodyear, Inc. has entered into a contract

with Atlantic under which Atlantic agrees to promote the sale of said TBA products to the service stations and distributors selling Atlantic's petroleum products in part of its sales territory."

51

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—6486) * *

ANSWER OF THE GOODYEAR TIRE & RUBBER COMPANY TO THE COMPLAINT, AS AMENDED.

The Goodyear Tire & Rubber Company, by its attorneys, for its answer to the complaint of the Federal Trade Commission, as amended by the order amending the complaint of the hearing examiner

I.

Answering generally the allegations of the complaint, as amended, alleges:

A. The sales commission plan, which is the subject of the complaint, as amended, is a practical, efficient and inexpensive method of distribution of essential TBA products to motorists through thousands of independent service stations throughout the United States.

52 B. Said sales commission plan is a legitimate and competitive method of marketing which benefits suppliers of TBA products, oil companies, dealers and distributors of petroleum-products and the consuming public.

C. Said sales commission plan is a part of intense and legitimate competition among suppliers of TBA products for the business of said service stations.

D. Said sales commission plan is not in violation of Section 5 of the Federal Trade Commission Act (U. S. C. Title 15, Section 45) or any other statute.

E. The bringing and prosecution of the complaint and the complaint, as amended, is not in the public interest.

II.

Answering the specific allegations of the complaint, as amended, alleges:

1. As to paragraph 1 of the complaint, as amended, Denies each and every allegation of the first unnumbered paragraph, except admits that respondent, The Goodyear Tire & Rubber Company (herein called "Goodyear"), is a corporation organized, existing and doing business under the laws of the State of Ohio with its principal office 53 and place of business located at 1144 East Market Street, Akron, Ohio and that Goodyear operates its business directly and does business with several subsidiaries and that The Goodyear Tire & Rubber Company, Inc. (herein called "Goodyear, Inc."), is a subsidiary which sells Goodyear's products.

Denies each and every allegation of the second unnumbered paragraph, except admits Goodyear, Inc. is a corporation organized, existing and doing business under the laws of the State of Delaware with its principal office and place of business located at 1144 East Market Street, Akron, Ohio; that Goodyear, Inc. is a wholly-owned subsidiary of Goodyear and sells products of Goodyear; that some of the principal officers of Goodyear are also officers of Goodyear, Inc. and that the two companies share the same principal office and place of business.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the third unnumbered paragraph, except as such facts are admitted by The Atlantic Refining Company (herein called "Atlantic"), in its answer to the complaint, as amended.

2. Admits the allegations of paragraph 2 of the complaint, as amended.

54 3. Denies each and every allegation of paragraph 3 of the complaint, as amended, except admits that

Atlantic is a producer and distributor of petroleum products and admits that Atlantic renders sales assistance to certain companies, including Goodyear, Inc., in promoting the sale of TBA products and denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 as to the business operations of Atlantic, except as such allegations are admitted by Atlantic in its answer to the complaint, as amended.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the complaint, as amended, except admits so much of the allegations of paragraph 4 of the complaint, as amended, as to respondents Goodyear and Goodyear, Inc. as are allegations of fact and not legal conclusions.

5. Denies each and every allegation of paragraph 5 of the complaint, as amended, except admits that Goodyear and Goodyear, Inc. compete with others in selling certain TBA products and that Atlantic renders sales assistance to Goodyear, Inc. in promoting the sale of TBA products.

6. As to paragraph 6 of the complaint, as amended,
55 Admits the allegations of the first unnumbered paragraph.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations as to the second unnumbered paragraph, except admits that a number of stations selling the petroleum products of Atlantic sell TBA products.

7. As to paragraph 7 of the complaint, as amended,

Denies each and every allegation of the first unnumbered paragraph, except admits that Goodyear, Inc. has entered into a sales commission contract with Atlantic with respect to TBA products as to the terms of which contract reference is made to the contract itself and admits that Atlantic has entered into a sales commission agreement with respect to TBA products with The Firestone Tire & Rubber Com-

pany as to the terms of which agreement reference is made to the agreement itself.

Denies each and every allegation of the second unnumbered paragraph, except admits that Goodyear, Inc. has a sales commission contract with Atlantic for TBA products as to the terms of which contract reference is made to 56 the contract itself; admits that Goodyear, Inc. pays

Atlantic sales commissions pursuant to said contract and admits that pursuant to said contract Atlantic renders sales assistance in connection with the sale by Goodyear, Inc. of TBA products covered by said contract; admits that the stations and distributors selling the petroleum products of Atlantic do not receive any part of any commission paid to Atlantic under said contract; and denies knowledge or information sufficient to form a belief as to the truth of the allegation that stations and distributors selling the petroleum products of Atlantic at no time authorized or requested Atlantic to find for them, or commit them to, a source of supply for TBA products.

Denies each and every allegation of the third unnumbered paragraph, except admits that the service stations and distributors selling the petroleum products of Atlantic are operated as independently-owned business enterprises and that Atlantic has various contractual arrangements with said service stations and distributors as to which arrangements reference is made to the contracts themselves.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the fourth unnumbered paragraph.

57 Denies each and every allegation of the fifth unnumbered paragraph.

8. As to paragraph 8 of the complaint, as amended,

Denies each and every allegation of the first unnumbered paragraph, except admits that Goodyear, Inc. has sold

TBA products to service stations and distributors selling petroleum products of Atlantic and has received valuable sales assistance from Atlantic in connection with such sales and admits that Goodyear, Inc. has made sales covered by its sales commission contract with Atlantic and that Goodyear, Inc. has paid commissions to Atlantic pursuant to said contract in substantially the amounts stated in the last sentence of said unnumbered paragraph.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the second unnumbered paragraph.

9. Denies each and every allegation of paragraph 9 of the complaint, as amended, except admits that Goodyear, Inc. has entered into sales commission agreements with oil companies other than Atlantic as to the terms of which agreements reference is made to the agreements themselves; admits that pursuant to such agreements said oil companies have rendered and render sales assistance to Goodyear, Inc.; admits that Goodyear, Inc. has made sales of TBA products to service stations selling petroleum products of such oil companies and admits that Goodyear, Inc. has made sales covered by its sales commission contract with Shell Oil Company and that Goodyear, Inc. has paid commissions to the said oil company pursuant to said contract in the amounts stated in the last sentence of said paragraph 9 of the complaint, as amended.

10. Denies each and every allegation of paragraph 10 of the complaint, as amended, except admits that some suppliers of TBA products do not use a sales commission arrangement for the marketing of some or all TBA products.

11. Denies each and every allegation of paragraph 11 of the complaint, as amended.

12. Denies each and every allegation of paragraph 12 of the complaint, as amended.

III.

As further defenses to the complaint and order amending complaint of the Federal Trade Commission, respondent, Goodyear, alleges:

59 1. The complaint and order amending complaint do not comply with Section 5(b) of the Federal Trade Commission Act in that:

(a) The complaint, as amended by the order amending complaint, was not premised upon a finding by the Federal Trade Commission that it had reason to believe that Goodyear has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce and by a finding that it appears to the Commission that a proceeding by it with respect to Goodyear would be in the interest of the public.

(b) The complaint, as amended by the order amending complaint, was not issued and served upon Goodyear by the Commission.

(c) The complaint, as amended by the order amending complaint, does not contain a notice of hearing upon a day and at a place therein fixed at least 30 days after the service of the complaint, as amended.

2. The complaint, as amended by the order amending complaint, does not comply with Rules 3.3 and 3.6 of the Rules of Practice of the Federal Trade Commission in that:

60 (a) The complaint, as amended by the order amending complaint of the hearing examiner is not a complaint issued and served by the Federal Trade Commission.

(b) The complaint, as amended by the order amending complaint, does not provide notice of the time and place for hearing at least 45 days after service of the complaint, as amended.

Wherefore, respondent, The Goodyear Tire & Rubber Company, prays that the complaint, as amended by the order amending complaint of the hearing examiner be, dismissed.

Dated: July 6, 1956.

Cahill, Gordon, Reindel & Ohl,
By Mathias F. Correa,
Mathias F. Correa,
63 Wall Street,
New York 5, New York,
*Attorneys for The Goodyear
Tire & Rubber Company.*

61

BEFORE FEDERAL TRADE COMMISSION.

(Caption—6486)

**ANSWER OF THE GOODYEAR TIRE & RUBBER
COMPANY, INC.**

The Goodyear Tire & Rubber Company, Inc. by its attorneys, for its answer to the complaint of the Federal Trade Commission, as amended by the order amending complaint of the hearing examiner

I.

Answering generally the allegations of the complaint, as amended, alleges:

A. The sales commission plan, which is the subject of the complaint, as amended, is a practical, efficient and inexpensive method of distribution of essential TBA products to motorists through thousands of independent service stations throughout the United States.

62 B. Said sales commission plan is a legitimate and competitive method of marketing which benefits suppliers of TBA products, oil companies; dealers and distributors of petroleum products and the consuming public.

C. Said sales commission plan is a part of intense and legitimate competition among suppliers of TBA products for the business of said service stations.

D. Said sales commission plan is not in violation of Section 5 of the Federal Trade Commission Act (U. S. C. Title 15, Section 45) or any other statute.

E. The bringing and prosecution of the complaint and the complaint, as amended, is not in the public interest.

II.

Answering the specific allegations of the complaint, as amended, alleges:

1. As to paragraph 1 of the complaint, as amended,

Denies each and every allegation of the first unnumbered paragraph, except admits that respondent, The Goodyear Tire & Rubber Company (herein called "Goodyear"), is a corporation organized, existing and doing business under the laws of the State of Ohio with its principal office

62 and place of business located at 1144 East Market Street, Akron, Ohio and that Goodyear operates its business directly and does business with several subsidiaries and that The Goodyear Tire & Rubber Company, Inc. (herein called "Goodyear, Inc."), is a subsidiary which sells Goodyear's products.

Denies each and every allegation of the second unnumbered paragraph, except admits Goodyear, Inc. is a corporation organized, existing and doing business under the laws of the State of Delaware with its principal office and place of business located at 1144 East Market Street, Akron, Ohio; that Goodyear, Inc. is a wholly-owned sub-

sidiary of Goodyear and sells products of Goodyear; that some of the principal officers of Goodyear are also officers of Goodyear, Inc. and that the two companies share the same principal office and place of business.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the third unnumbered paragraph, except as such facts are admitted by The Atlantic Refining Company (herein called "Atlantic"), in its answer to the complaint, as amended.

2. Admits the allegations of paragraph 2 of the complaint, as amended.

64 3. Denies each and every allegation of paragraph 3 of the complaint, as amended, except admits that Atlantic is a producer and distributor of petroleum products and admits that Atlantic renders sales assistance to certain companies, including Goodyear, Inc., in promoting the sale of TBA products and denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 as to the business operations of Atlantic, except as such allegations are admitted by Atlantic in its answer to the complaint, as amended.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the complaint, as amended, except admits so much of the allegations of paragraph 4 of the complaint, as amended, as to respondents Goodyear and Goodyear, Inc. as are allegations of fact and not legal conclusions.

5. Denies each and every allegation of paragraph 5 of the complaint, as amended, except admits that Goodyear and Goodyear, Inc. compete with others in selling certain TBA products and that Atlantic renders sales assistance to Goodyear, Inc. in promoting the sale of TBA products.

6. As to paragraph 6 of the complaint, as amended,

65 Admits the allegations of the first unnumbered paragraph.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations as to the second unnumbered paragraph, except admits that a number of stations selling the petroleum products of Atlantic sell TBA products.

7. As to paragraph 7. of the complaint, as amended,

Denies each and every allegation of the first unnumbered paragraph, except admits that Goodyear, Inc. has entered into a sales commission contract with Atlantic with respect to TBA products as to the terms of which contract reference is made to the contract itself and admits that Atlantic has entered into a sales commission agreement with respect to TBA products with The Firestone Tire & Rubber Company as to the terms of which agreement reference is made to the agreement itself.

Denies each and every allegation of the second unnumbered paragraph, except admits that Goodyear, Inc. has a sales commission contract with Atlantic for TBA products as to the terms of which contract reference is made to the

contract itself; admits that Goodyear, Inc. pays Atlantic sales commissions pursuant to said contract and admits that pursuant to said contract Atlantic renders sales assistance in connection with the sale by Goodyear, Inc. of TBA products covered by said contract; admits that the stations and distributors selling the petroleum products of Atlantic do not receive any part of any commission paid to Atlantic under said contract; and denies knowledge or information sufficient to form a belief as to the truth of the allegation that stations and distributors selling the petroleum products of Atlantic at no time authorized or requested Atlantic to find for them, or commit them to, a source of supply for TBA products.

Denies each and every allegation of the third unnumbered paragraph, except admits that the service stations and distributors selling the petroleum products of Atlantic

are operated as independently-owned business enterprises and that Atlantic has various contractual arrangements with said service stations and distributors as to which arrangements reference is made to the contracts themselves.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the fourth unnumbered paragraph.

67 Denies each and every allegation of the fifth unnumbered paragraph.

8. As to paragraph 8 of the complaint, as amended, Denies each and every allegation of the first unnumbered paragraph, except admits that Goodyear, Inc. has sold TBA products to service stations and distributors selling petroleum products of Atlantic and has received valuable sales assistance from Atlantic in connection with such sales and admits that Goodyear, Inc. has made sales covered by its sales commission contract with Atlantic and that Goodyear, Inc. has paid commissions to Atlantic pursuant to said contract in substantially the amounts stated in the last sentence of said unnumbered paragraph.

Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the second unnumbered paragraph.

9. Denies each and every allegation of paragraph 9 of the complaint, as amended, except admits that Goodyear, Inc. has entered into sales commission agreements with oil companies other than Atlantic as to the terms of which agreements reference is made to the agreements themselves;

68 admits that pursuant to such agreements said oil companies have rendered and render sales assistance to Goodyear, Inc.; admits that Goodyear, Inc. has made sales of TBA products to service stations selling petroleum products of such oil companies and admits that Goodyear, Inc. has made sales covered by its sales commis-

sion contract with Shell Oil Company and that Goodyear, Inc. paid commissions to the said oil company pursuant to said contract in the amounts stated in the last sentence of said paragraph 9 of the complaint, as amended.

10. Denies each and every allegation of paragraph 10 of the complaint, as amended, except admits that some suppliers of TBA products do not use a sales commission arrangement for the marketing of some or all TBA products.

11. Denies each and every allegation of paragraph 11 of the complaint, as amended.

12. Denies each and every allegation of paragraph 12 of the complaint, as amended.

III.

As further defenses to the complaint and order amending complaint of the Federal Trade Commission, respondent, Goodyear, Inc., alleges:

69 1. The complaint and order amending complaint do not comply with Section 5(b) of the Federal Trade Commission Act in that

(a) The complaint and order amending complaint were not preceded by a finding by the Federal Trade Commission that it had reason to believe that Goodyear, Inc., has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce and by a finding that it appears to the Commission that a proceeding by it with respect to Goodyear, Inc. would be in the interest of the public.

(b) The complaint, as amended by the order amending complaint, was not issued and served upon Goodyear, Inc. by the Commission.

(c) The complaint and order amending complaint do not contain a notice of a hearing upon a day and at a place therein fixed at least 30 days after the service of the complaint and order amending complaint.

2. The complaint and order amending complaint do not comply with Rules 3.3 and 3.6 of the Rules of
70 Practice of the Federal Trade Commission in that

(a) The complaint, as amended by the order amending complaint of the hearing examiner is not a complaint issued and served by the Federal Trade Commission.

(b) The complaint, as amended by the order amending complaint, does not provide notice of the time and place for hearing at least 45 days after service of the complaint, as amended.

Wherefore, respondent, The Goodyear Tire & Rubber Company, Inc., prays that the complaint, as amended by the order amending complaint of the hearing examiner be, dismissed.

Dated: July 6, 1956.

Cahill, Gordon, Reindel & Ohl,

By Mathias F. Correa,

Mathias F. Correa,

63 Wall Street,

New York 5, New York,

*Attorneys for The Goodyear
Tire & Rubber Company,
Inc.*

**ANSWER OF THE ATLANTIC REFINING COMPANY
TO COMPLAINT AS AMENDED BY ORDER OF
MAY 21, 1956.**

Atlantic Refining Company (hereinafter referred to as "Atlantic") reserving to itself all, and all manner of, objections to the uncertainties and insufficiencies of the Complaint of the Federal Trade Commission as amended by the Order dated May 21, 1956 of Earl J. Kolb, Hearing Examiner, makes answer thereto as follows:

The Complaint as thus amended is defective upon its face for the reason that it does not state that the Federal Trade Commission has reason to believe that The Goodyear Tire & Rubber Company, Inc., a party respondent in the proceeding, has violated the provisions of Section 5 of the Federal Trade Commission Act and does not state
72 that it appears to the Commission that a proceeding against said respondent would be in the public interest.

Atlantic makes further answer to the numbered paragraphs of the Complaint as follows:

Paragraph One: Atlantic was incorporated in 1870 under the laws of the State of Pennsylvania, and has engaged in business continuously since that date. Its principal office and place of business is located at 260 South Broad Street in Philadelphia, Pennsylvania.

Atlantic is without knowledge of the corporate structure, location, officers, business or activities of respondent The Goodyear Tire & Rubber Company (referred to in the amended Complaint and hereinafter as "Goodyear") and its various subsidiaries, except as hereinafter noted. The Goodyear Tire & Rubber Company, Inc. (referred to in the amended Complaint and hereinafter as "Goodyear,

Inc.") is the only corporation of the Goodyear group with which Atlantic has business relations. Its principal office and place of business is located at 1144 East Market Street, Akron, Ohio.

73 Paragraph Two: Atlantic is without knowledge of the business or activities of Goodyear. Goodyear, Inc. is engaged in the business of selling TBA products generally as described in Paragraph Two of the amended Complaint. Certain products, such as tires, inner tubes, batteries, automotive parts and accessories, are properly described as "TBA" products.

Paragraph Three: Atlantic has refined and sold superior quality petroleum products longer than any other major refiner on the East Coast and placed in operation the first modern type automotive service station facility in this country. Hence, Atlantic has been engaged in competition during almost the entire life span of the oil industry.

Directly or through wholly owned subsidiaries Atlantic now engages in substantially all branches of the petroleum industry. It purchases about half of its refinery crude oil requirements, and a great majority of the locations where Atlantic gasoline, motor oil and automotive lubricants are sold to the motorist consumer are owned by, or leased from owners other than Atlantic to dealers who operate service stations at such locations. Atlantic's annual

74 sales of such petroleum products to distributors and service station dealers constitute a small percentage of the market.

Atlantic denies that the Complaint fairly describes the manner in which it renders TBA sales assistance.

Paragraph Four: Atlantic admits that Goodyear, Inc. is engaged in commerce in TBA products. The averments as to Atlantic are denied except as hereinafter stated.

Atlantic markets petroleum products, including various

grades of heating oils, waxes, liquid propane, industrial lubricants, asphalts, solvents, and a wide variety of other petroleum and petrochemical products. It is not a manufacturer of TBA, and since 1952 it has not been a wholesale distributor of TBA.

Service station dealers selling certain Atlantic petroleum products, such as gasoline, motor oil and automotive lubricants, are situated in a 17-State marketing area comprising the Eastern Seaboard States from New Hampshire to Florida and portions of Ohio and West Virginia. Atlantic makes no sales in the District of Columbia to distributors or service station dealers, and does not operate any wholesale facilities or service stations in the District.

75 With the exception noted below, Atlantic admits that petroleum products sold by it are shipped from the States in which such products are manufactured, refined, stored or warehoused to terminals, bulk plants, or bulk storage located in other States for the purpose of sale and distribution to resellers and consumers in such other States, but denies that such course of conduct confers any jurisdiction in the Federal Trade Commission, insofar as Atlantic is concerned, with respect to the matters here in controversy.

Substantially all gasoline, motor oil and automotive lubricants sold by Atlantic to petroleum wholesalers and petroleum retailers located and doing business in Pennsylvania are manufactured, refined, shipped and sold within the State of Pennsylvania, and are not manufactured, refined nor warehoused outside such State nor shipped into it from outside its borders.

Paragraph Five: Admitted that Goodyear, Inc. is in competition with others in selling TBA products and that Atlantic renders sales assistance to Goodyear, Inc. in promoting the sale of TBA products.

76 Atlantic has never been a manufacturer of TBA.

For any years prior to 1952 Atlantic was a purchaser-reseller of TBA, and during such time was engaged in competition with other corporations, partnerships, individuals and firms who also sold TBA. Atlantic's TBA activities since 1952 have been devoted to assisting Goodyear, Inc. and others to sell TBA.

Paragraph Six: Denied as averred. Atlantic sells certain of its petroleum products to petroleum distributors and to several thousand service station dealers, the more progressive and competitive of which purchase TBA products from others for resale to the motoring public.

Service stations are convenient, logical, and necessary points for satisfying the TBA needs of motorists. For this reason, the modern service station has become a large and important market for TBA products, and the retail sale of such products has become an integral, essential part of the modern retail service station business. Dealers who operate modern service stations have found that a competitively priced, readily available, nationally advertised superior quality TBA line increases their petroleum products and related services business, supplements their
77 income from the sale of petroleum products, and is essential to the successful, competitive conduct of their retail service station business.

In order for Atlantic to survive in the intensely competitive business of selling gasoline, motor oil, and automotive lubricants it must utilize a system of distribution based on modern retail service stations operated by competent dealers. Atlantic cannot compete effectively with other oil companies unless dealers purchasing Atlantic's petroleum products are competitive at the retail level, any many of such dealers cannot compete successfully unless the TBA component of their retail business is competitive with the TBA selling activity of their retail competitors.

Many other economic realities explain and justify Atlantic's interest in the purchase and resale of superior quality TBA by distributors and dealers who handle principally Atlantic petroleum products.

Paragraph Seven: Atlantic has entered into contracts with Goodyear, Inc. providing for the rendering of certain services by Atlantic in connection with the sale of Goodyear TBA. Atlantic has also entered into contracts of a generally similar nature with The Firestone Tire and Rubber Company, which is not a respondent in this proceeding. As to the terms of such contracts, reference is made to the contracts themselves. Atlantic denies that the Complaint fairly paraphrases, summarizes, or states the terms and effects of such contracts, and also denies the further allegations of Paragraph Seven except as hereinafter expressly stated.

Sales commissions paid by Goodyear, Inc. to Atlantic are compensation for services rendered by Atlantic. Atlantic admits that petroleum distributors and service station dealers purchasing Atlantic petroleum products receive no part of Atlantic's TBA sales commissions. The prices they pay for Goodyear TBA are necessarily competitive with prices paid by other dealers and distributors. Atlantic began withdrawing from the position of a TBA purchaser-reseller on an experimental basis during 1950 and by the latter part of 1951 had ceased to be a wholesale distributor of TBA. The economically essential wholesaler distributive function formerly performed by Atlantic is now carried out by a substantial number of separate corporation, partnerships, individuals and firms whose competitive opportunities were significantly enhanced or were created by Atlantic's withdrawal as a wholesale distributor of TBA.

Atlantic, since 1952, has neither manufactured nor purchased and sold TBA for resale. Atlantic has committed no one to the purchase or sale of Goodyear TBA.

Insofar as the motoring public in Atlantic's marketing area is concerned, oil companies compete with each other principally through the distributive medium of petroleum distributors and retail dealers. As to Atlantic this fundamental economic fact means that its competitive survival depends on two broad standards of business performance, namely:

(1) The economic necessity for Atlantic to support its distributor and dealer customers by being competitive with other oil companies as to all the essential components of the business, beginning with product quality and price and extending through the range of other factors to the competent rendering of expert economic advice and the furnishing of business-building counsel, which all customers can accept or reject, in whole or in part; and

(2) The economic necessity for Atlantic's reseller customers to be competitive with their competition as to all the essential components of the business, beginning with product quality and price and extending through the range of other factors to the competent rendering of those services which the motoring public demands in return for its patronage.

Atlantic, having reached the conclusion that it would prefer not to engage as a direct participant in the TBA business, either as manufacturer or a wholesale distributor, found that the only economically feasible alternative compatible with the competitive necessities of the market place was and is the endorsement, sponsorship, and active support of one or more other efficient, reliable sources of supply—i.e., the Sales Commission Plan, an ordinary business method openly adopted and extensively employed in the industry over a period of many years.

The concept of commercial "control,"—i.e., control of resellers' buying practices, and the opposing concept of

salesmanship,—i.e., urge, recommended and endeavor to persuade, are contradictory concepts. Atlantic denies the “control” alleged in the Complaint.

Atlantic admits that it recommends, urges and endeavors to persuade petroleum products reseller customers to
81 purchase some Goodyear TBA. Many of Atlantic’s customers purchase little or no TBA from recommended Goodyear, Inc. TBA supply points. Large quantities of TBA sold to and by such petroleum reseller customers of Atlantic are not TBA products manufactured, distributed, or sold by Goodyear, Inc. or by The Firestone Tire & Rubber Company.

Atlantic has no “contracts of employment” with its gasoline reseller customers.

Atlantic admits that its “credit card contracts” are subject to a 48-hour cancellation right. Neither the existence nor exercise of such cancellation right has resulted in control of its customers’ buying practices.

With respect to the remaining types of contracts alleged to exist between Atlantic and petroleum distributors and service station dealers, Atlantic cannot be certain of the intended meaning or relevance of the descriptive conclusion “short term” but asserts that if the word “short” is measured by any reasonable yardstick in the light of existing market conditions and legitimate business considerations, Atlantic has not entered into any “short term” contracts of the type alleged. Atlantic’s contracts are definite as to term, as required by law, and Atlantic denies that
82 the expiration of a designated term imposes upon it a legal duty to renew an expired agreement.

Atlantic denies that its contracts with distributors and service station dealers contain provisions so broad and general as to be susceptible of arbitrary interpretation by Atlantic or that Atlantic has so attempted to interpret any

provisions of such contracts. The provisions of such contracts are lawful and reasonably definite.

Atlantic admits that some of its contracts contain certain provisions providing for cancellation in the event of non-performance, but denies that the enforcement of a lawful right based on non-performance can simultaneously constitute the breach of any legal duty to the party whose non-performance gives rise to the cancellation right.

Atlantic's policy with respect to petroleum distributors and service station dealers is that such potential TBA customers are free to accept or reject any TBA program suggested and recommended by Atlantic. This policy has been publicized and called to the attention of Atlantic's petroleum products reseller customers on many occasions, 83 both in writing and orally, since Atlantic's adoption of the Sales Commission Plan. Atlantic's Management has consistently and diligently pursued a course of action reasonably calculated to achieve the objective of adequately informing its field force as to the meaning and scope of such policy and to assure itself that the policy was and is faithfully translated into actual practice.

Service station dealer customers of Atlantic who purchase Goodyear TBA are in direct competition with adjacent or nearby service stations selling the same or other brands of TBA products.

Paragraph Eight: Atlantic denies that Goodyear, Inc. in 1951 and 1952 sold the quantities of TBA products specified in the Complaint in commerce to distributors and service station dealers handling Atlantic petroleum products, and denies the averment that the service station and distributor TBA market was or is "controlled" by Atlantic. Atlantic admits that certain amounts of Goodyear TBA were sold to such petroleum distributors and service station dealers by recommended Goodyear, Inc. TBA supply

points and that the total amount thus sold in 1952, the first complete calendar year of full scale operation under the Sales Commission arrangement with Goodyear, Inc. was greater than the corresponding total amount sold in 1951.

Although The Firestone Tire & Rubber Company is not a respondent herein, the admissions, denials, and explanations set forth above are applicable to the allegations of the Complaint respecting or relating to the Firestone Tire & Rubber Company.

Paragraph Nine: Atlantic is without knowledge of the facts averred and demands proof thereof to the extent, if any, that such facts may be deemed relevant to the Complaint against Atlantic.

Paragraph Ten: Atlantic denies that competitors of Goodyear, Inc. and The Firestone Tire & Rubber Company are unable to sell their TBA products and merchandise to petroleum distributors and service station dealers because of any agreement entered into by Atlantic. Atlantic has no knowledge of the extent to which unnamed competitors of Goodyear, Inc. and The Firestone Tire & Rubber Company have elected to pay sales commissions to other oil companies.

85. Paragraph Eleven: Atlantic denies each allegation of Paragraph Eleven of the Complaint.

Paragraph Twelve: Atlantic denies each and every averment of paragraph twelve of the Complaint. Atlantic entered into the above referred to Agreements with Goodyear, Inc. and The Firestone Tire & Rubber Company for the main and lawful purpose of increasing competition at all levels of distribution in the TBA and petroleum products business. Atlantic's acts and practices pursuant to and under such Agreements have been consistent with and reasonably related to the accomplishment of such purpose.

Wherefore, The Atlantic Refining Company respectfully prays that the Complaint be dismissed and that final judgment be entered for it.

Charles I. Thompson,
Attorney for Defendant, The
Atlantic Refining Company.

Of Counsel:

Ballard, Spahr, Andrews & Ingersoll,
1035 Land Title Building,
Philadelphia 10, Pennsylvania.

Dated:

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 * * (Caption-6486) * *

Rubber Company, Inc. (hereinafter referred to as Goodyear, Inc.) and a number of oil companies other than Atlantic; and

It appearing that the basis for the rulings complained of was that evidence of the relationships between Atlantic and Firestone and between Goodyear, Inc., and oil companies other than Atlantic have no bearing on the issues in this proceeding, which proceeding is concerned only with the contractual relationship between Atlantic and Goodyear, Inc., and the acts and practices engaged in pursuant thereto; and

It further appearing, however, that the allegations of the complaint are not limited to the existence of and activities under the commission contract between respondents

Atlantic and Goodyear, Inc., but relate also to a general course of competitive action by each of said respondents, under which respondent Atlantic is charged with having unlawfully entered into and acted under contracts with both Goodyear, Inc., and Firestone providing for the receipt by it of commissions on the sales of all tires, batteries and accessories sold by Goodyear, Inc., and Firestone to service stations controlled by Atlantic, and respondent Goodyear, Inc., is alleged to have unlawfully entered into and acted under similar contracts with a number of oil companies, including Shell Oil Company and Atlantic, providing for the payment by it to said oil companies of commissions on the sales of all tires, batteries and accessories sold by Goodyear, Inc., to service stations controlled by said oil companies; and

The Commission being of the opinion that the evidence rejected by the hearing examiner apparently was relevant and material to the direct issues thus raised by the complaint and that, if so, it should have been received in support of said issues:

It is Ordered that the appeal of counsel in support of the complaint be, and it hereby is, sustained.

It Is Further Ordered that the hearing examiner be, and he hereby is, directed to receive into the record such relevant, material and reliable evidence as has been or may be offered concerning the details, operation and competitive effects of the override commission contract between respondent Atlantic and Firestone and of the alleged similar commission contracts between respondent Goodyear, Inc., and each of a number of oil companies other than respondent Atlantic. Such evidence relating to the contract between Atlantic and Firestone should be admitted as against respondent Atlantic unconditionally and as against respondent Goodyear, Inc., subject to a subsequent motion to strike upon a proper showing; and the evidence relating to the alleged contracts between Goodyear, Inc., and the oil companies other than Atlantic should be admitted as against respondent Goodyear, Inc., unconditionally and as against respondent Atlantic subject to the same type of motion.

By the Commission:

Robert M. Parrish,
Secretary.

Issued: December 5, 1956.

J. W. G. WCK.

**MOTION OF THE GOODYEAR TIRE & RUBBER
COMPANY AND THE GOODYEAR TIRE & RUBBER
COMPANY, INC. TO WITHDRAW ISSUES AND TO
STRIKE EVIDENCE.**

To the Honorable Earl J. Kolb, Hearing Examiner:

The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc. (herein collectively called "Goodyear"), by their attorneys, move pursuant to Rule 3.8 of the Commission Rules of Practice and Procedure for an order granting the following relief:

(a) Withdrawing from this proceeding any issue legal or factual as to the Goodyear-Shell Oil Company Sales Commission Plan.

227 (b) Striking all evidence heretofore received in this case with respect to the Goodyear-Shell Oil Company Sales Commission Plan.

The reasons for the motion are as follows:

1. Identical legal and factual issues as to the Goodyear-Shell Oil Company Sales Commission Plan are raised both in this proceeding and in the proceeding, Docket No. 6487, in which The Firestone Tire & Rubber Company and Shell Oil Company are respondents.

2. The same Hearing Examiner has been assigned to hear testimony, receive evidence and determine the issues in both proceedings. The Hearing Examiner has already heard on the issue of the Goodyear-Shell Oil Company Sales Commission Plan the testimony of the same witness in both proceedings (Tr. 2092-93). Said testimony, although purporting to cover the same subject matter, differed in material respects as between the proceedings.

3. There is reason to believe that if the present course is followed, the Hearing Examiner will receive in 228 Docket No. 6487 additional evidence and testimony with respect to the Goodyear-Shell Oil Company Sales Commission Plan. Such testimony may in some instances again involve witnesses who have testified in this proceeding.

4. Upon the foregoing facts, it is manifest that Goodyear has been and is being deprived of its rights to a fair hearing as guaranteed by the Constitution and laws of the United States.

Dated: December 2, 1957.

Cahill, Gordon, Reindel & Ohl,

By Thomas C. Mason,

63 Wall Street,

New York 5, New York,

*Attorneys for The Goodyear
Tire & Rubber Company and
The Goodyear Tire & Rubber
Company, Inc.*

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BEFORE FEDERAL TRADE COMMISSION.

(Caption—6486)

ANSWER IN OPPOSITION TO MOTION OF RESPONDENTS GOODYEAR TIRE & RUBBER COMPANY AND THE GOODYEAR TIRE & RUBBER COMPANY, INC., TO WITHDRAW ISSUES AND TO STRIKE EVIDENCE.

Come Now counsel in support of the complaint and, in opposition to the Motion to Withdraw Issues and to Strike Evidence, filed on December 2, 1951, by counsel for respondents Goodyear Tire & Rubber Company and The

Goodyear Tire & Rubber Company, Inc. (hereinafter referred to as respondent Goodyear), urge that said motion be denied for the reasons hereinafter set forth.

Respondent Goodyear's motion specifically prays for an order granting the following relief:

- "(a) Withdrawing from this proceeding any issue legal or factual as to the Goodyear-Shell Oil Company Sales Commission Plan.
- (b) Striking all evidence heretofore received in this case with respect to the Goodyear-Shell Oil Company Sales Commission Plan."

Respondent Goodyear's motion cites four "reasons" why such relief should be granted. It is contended that identical legal and factual issues as to the Goodyear-Shell Sales Commission Plan are raised in this proceeding and in Docket No. 6487, in which The Firestone Tire & Rubber

Company and Shell Oil Company are respondents; 232 that the same Hearing Examiner has been assigned to hear testimony, receive evidence and determine the issues in both proceedings; that one witness already has testified, and other witnesses may testify, in both proceedings concerning the Goodyear-Shell Sales Commission Plan; that the testimony of the one witness who has already testified in both proceedings (Tr. 2092-2093) differed in material respects as between the two proceedings; and, therefore, "it is manifest that Goodyear has been and is being deprived of its rights to a fair hearing as guaranteed by the Constitution and laws of the United States."

Just how it is "manifest" that respondent Goodyear's rights to a fair hearing are being impaired, and just how "the Constitution and laws of the United States" are being violated are nowhere set forth in the motion.

I. Evidence Relating to the Goodyear-Shell Oil Company Sales Commission Plan Comes Within the Scope of the Instant Complaint.

The complaint in the instant matter alleges that respondent Goodyear has entered into TBA Sales Commission Plans with The Atlantic Refining Company, also named as a respondent herein, and with other oil companies, including the Shell Oil Company (Paragraph Nine), in violation of Section 5 of the Federal Trade Commission Act, for reasons set forth in the complaint.

The Commission, in its Order Sustaining Interlocutory Appeal issued December 5, 1956, directed the Hearing Examiner "to receive into the record such relevant, material and reliable evidence as has been or may be offered concerning the details, operation and competitive effects of the override commission contract between respondent Atlantic and Firestone *and of the alleged similar commission contracts between respondent Goodyear, Inc., and each of a number of oil companies other than respondent Atlantic.*" (Emphasis supplied.)

In arriving at its ruling, the Commission held that the allegations of the complaint relate "*to a general course of competitive action by each of said respondents, under which . . . respondent Goodyear, Inc., is alleged to have unlawfully entered into and acted under similar contracts with a number of oil companies, including Shell Oil Company and Atlantic, providing for the payment by it to said oil companies of commissions on the sales of all tires, batteries and accessories sold by Goodyear, Inc., to service stations controlled by said oil companies.*" (Emphasis supplied.)

233. It is abundantly clear from the foregoing that evidence relating to the Goodyear-Shell Sales Commission Plan comes within the scope of the complaint in the

instant proceeding and is admissible in the manner set forth in the Commission's Order Sustaining Interlocutory Appeal issued December 5, 1956; therefore, such evidence should not be stricken or such issues withdrawn in this proceeding.

II. The Same Hearing Examiner Sitting in Similar Proceedings Involving Identical Legal and Factual Issues Does Not and Will Not Deprive Respondent Goodyear of Procedural Due Process.

Assuming arguendo that the same legal and factual issues are present in both this proceeding and Docket 6487 with respect to the Goodyear-Shell Oil Company Sales Commission Plan, it does not and will not deprive respondent Goodyear of a fair hearing in this proceeding.

In *Federal Trade Commission v. Cement Institute, et al.*, one respondent alleged bias on the part of the Commission and asked for disqualification of the Commission on the grounds that the Commission, or at least some members thereof, had previously filed reports with the Congress and with the President concluding that the multiple basing point system as used in the cement industry was unlawful. In rejecting this contention, the Supreme Court stated in part (*Federal Trade Commission v. Cement Institute, et al.*, 333 U. S. 683, 700-703), as follows:

"Neither the *Tumey* decision [*Tumey v. Ohio*, 273 U. S. 510] nor any other decision of this Court would require us to hold that it would be a violation of procedural due process for a judge to sit in a case after he had expressed an opinion as to whether certain types of conduct were prohibited by law. In fact, judges frequently try the same case more than once and decide identical issues each time, although these issues involve questions both of law and fact. Certainly, the Federal Trade Commission cannot possibly be under stronger constitutional compulsions in this respect than a court." (Emphasis supplied.)

234 In reaching the above conclusion, the Supreme Court stated at page 701, *Federal Trade Commission v. Cement Institute et al., supra*, that respondents "produced evidence—volumes of it. They were free to point out to the Commission by testimony, by cross-examination of witnesses, and by arguments, conditions of the trade practice under attack which they thought kept these practices within the range of legally permissible business activities."

In the instant proceedings, respondent Goodyear already has cross-examined witnesses concerning the Goodyear-Shell Sales Commission Plan and is "free to point out" to the Hearing Examiner and the Commission, by testimony and by arguments, conditions which they believe bring the alleged unlawful method of competition "within the range of legally permissible business activities".

In *Whitaker Cable Corporation v. Federal Trade Commission*, 239 F. 2d 253, respondent contended that it was denied a fair hearing because the same Hearing Examiner sat in a factually related matter involving certain customers of respondent. In rejecting this contention, the Circuit Court of Appeals, Seventh Circuit, stated at 256, 257, as follows:

"Finally, petitioner complains that the hearing examiner in this proceeding also held a hearing in a factually related matter in which petitioner did not participate. That proceeding involved eight automotive parts jobbers charged with knowingly inducing and receiving discriminatory prices by means of a group buying arrangement in violation of Section 2(f) of the Clayton Act, as amended. Petitioner was not a party to that proceeding and the issues were not the same as those involved in the instant case. Any order that might have issued in that proceeding could not have affected or prejudiced petitioner. We fail to see in what manner petitioner was prejudiced and petitioner does not indicate in what way it was prej-

udiced other than its assertion that such conduct by the hearing examiner violated 'concepts of basic fairness.' But see *Dolcin Corp. v. Federal Trade Commission*, App. D. C., 219 F. 2d 742, 745-46, cert. denied 348 U. S. 981; cf. *Federal Trade Commission v. Cement Institute*, 333 U. S. 683, 700-703."

As in the Whitaker case, *supra*, any order that might issue in Docket 6487 (Firestone-Shell), cannot affect or prejudice respondent Goodyear in Docket 6486. This fact was called to the attention of counsel for respondent Goodyear by the Hearing Examiner when counsel first raised the subject matter of the motion now under consideration on November 26, 1957 (Tr. 2034-2036). At that time, the Hearing Examiner stated (Tr. 2035): "Since you are not a party to the other case, it would not affect you."

Conclusion.

In view of the foregoing, it is submitted that respondent Goodyear's Motion to Withdraw Issues and to Strike Evidence should be denied.

Respectfully submitted,

James S. Kelaher,

Peter J. Dias,

Eugene Kaplan,

Counsel Supporting the Complaint.

December 12, 1957.

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BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—6486) * * *

**ORDER DENYING MOTION OF THE GOODYEAR
TIRE & RUBBER COMPANY AND THE GOODYEAR
TIRE & RUBBER COMPANY, INC., TO WITHDRAW
ISSUES AND TO STRIKE EVIDENCE.**

This matter is before the hearing examiner upon motion of The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc., to withdraw from this proceeding any issue legal or factual as to the Goodyear-Shell Oil Company Sales Commission Plan, and to strike all evidence in this case with respect to the Goodyear-Shell Oil Company Sales Commission Plan.

It is respondents' contention that because of the reception of evidence by the same hearing examiner, concerning the Goodyear-Shell Oil Company Sales Commission Plan in both this proceeding and in Docket No. 6487 in which The Firestone Tire & Rubber Company and Shell Oil Company are respondents, deprives the respondents of their rights to a fair hearing.

The hearing examiner in making this initial decision must issue a finding of fact which must be based upon the record in the proceeding in which such finding is made. It would be unlawful and in violation of the Administrative Procedure Act for the hearing examiner to give consideration to any matters not appearing in the record.

239 The motion of respondents is based upon the premise that the hearing examiner cannot or will not proceed lawfully in the issuance of an initial decision in this proceeding.

It is the opinion of the hearing examiner that there is no merit to respondents' contention.

It Is Therefore Ordered that the motion of The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc., to withdraw issues and to strike evidence, be, and the same is hereby, denied.

Earl J. Kolb,

Hearing Examiner.

January 2, 1958.

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BEFORE FEDERAL TRADE COMMISSION.

* * * (Caption—6486) * *

**INTERLOCUTORY APPEAL OF RESPONDENTS THE
GOODYEAR TIRE & RUBBER COMPANY AND THE
GOODYEAR TIRE AND RUBBER COMPANY, INC.**

This is an interlocutory appeal by the two Goodyear respondents from an adverse ruling by the Hearing Examiner on a motion to strike evidence and withdraw issues from this proceeding.

The purpose of the motion was to cure what we believe to be a fundamental violation of Goodyear's right to procedural process under the Constitution and laws of the United States.

This violation of fundamental rights exists because the Hearing Examiner is receiving extensive testimony on 248 one of the fact issues of this proceeding in a co-pending proceeding in which Goodyear is not represented.

Our reason for prosecuting an interlocutory appeal is our belief that if the violation continues, it may become impossible to eliminate the error from the case. A further reason is that respondents Goodyear are now engaged in preparing for the defense case. If the relief requested below is granted, the scope of the defense will be reduced and the proceedings will be expedited.

Request for Oral Argument.

The issues raised on the motion and on this appeal are of such importance that we respectfully request the privilege of oral argument before the Commission.

The Violation of Due Process Complained of.

The problem to which this appeal is addressed is that the Hearing Examiner is, during the pendency of this 249 proceeding, presiding over another proceeding covering issues of fact and law identical with those involved in this case.

The evidence so being received by the Hearing Examiner on one of the very fact issues in this proceeding is not merely documentary. It includes a large amount of oral testimony, some of which involves additional testimony of witnesses who have already appeared in this proceeding.

Thus, wholly ex parte to respondents Goodyear, the Hearing Examiner is receiving a large amount of information as to the facts of this case, is hearing the argument of counsel and is inevitably forming impressions, opinions and conclusions as to the credibility of witnesses and issues of fact directly involved in this case.

In complaining of this situation, we do not wish to attack the integrity, competence or fairmindedness of the Hearing Examiner.

250 Our point is that under the circumstances of this case, it is humanly impossible to avoid importing into this case impressions and conclusions formed in the other.

The Duplication of Issues.

In order to understand how this extraordinary situation came about, it is necessary to consider the complaints by which the proceedings before the Hearing Examiner were initiated.

The particular trade practice under attack in these com-

plaints, known as the sales commission plan, is a method of marketing tires, batteries and accessories (collectively called TBA) by tire companies through oil company outlets.

Under this plan the oil company agrees to render to the tire company, sales assistance in the marketing of TBA products to dealers selling the petroleum products of the oil company. In return, the tire company pays the oil company a commission for this service.

251 In attacking this practice, the Commission brought three identical complaints, each of which named as respondents a tire company and an oil company who were parties to a sales commission arrangement (Dockets 6485, 6486 and 6487).

Each complaint asserts that the particular arrangement was a violation of Section 5 of the Federal Trade Commission Act (Par. 12 of complaints). Each places main emphasis on the oil company's relationship to and treatment of its dealers as a source of illegality (Par. 7 of complaints). Although the asserted restraint of trade must necessarily involve the existence of an arrangement between two parties, there is no charge of any conspiracy.

The problem of duplication of issues arises from the fact that the complaints do not, however, confine their charges of illegality to the particular sales commission arrangement between the respondent tire and oil companies.

252 Instead, each complaint additionally alleges that the oil company respondent has another sales commission arrangement with another tire company (Par. 7 of complaints). Each of the complaints further alleges that the tire company respondent has entered into a number of additional sales commission arrangements with other oil companies whose relations with their dealers are similar to those of the oil company respondent (Par. 9 of complaints).

By so challenging in each complaint the legality of a

number of sales commission arrangements, the complaints have brought about a duplication of issues in the three separate proceedings. Thus in the *Goodyear-Atlantic* proceeding, the legality of Goodyear's sales commission arrangement with Shell is called into question.

At the same time, in the *Firestone-Shell* case (Docket 6487), the legality of the same sales commission arrangement between Shell and Goodyear is challenged.

253 It is the duplication of hearings and the receipt of evidence and testimony with respect to this issue in the *Goodyear-Atlantic* and *Firestone-Shell* proceedings which has resulted in the deprivation of due process which is complained of in this interlocutory appeal.

Our motion before the Hearing Examiner sought to eliminate this error by striking evidence and by withdrawing the common issue of the legality of the Goodyear-Shell sales commission plan from the *Goodyear-Atlantic* proceeding.

The Prior Interlocutory Appeal.

In order to place the particular issues here raised in context, it is also necessary to discuss the prior interlocutory appeal brought by the attorney supporting the complaint challenging certain exclusionary rulings of the Hearing Examiner.

During the early stages of the three proceedings, the Hearing Examiner was concerned with the problem
254 of the multiplication of fact issues brought about by the allegations challenging the legality of sales commission arrangements with non-respondent tire and oil companies.

The Hearing Examiner accordingly limited the evidence to be received as to the sales commission arrangement between the respondent oil company and non-respondent tire company and refused to receive evidence as to sales

commission arrangements between the respondent tire company and non-respondent oil companies (Tr. 52-54).

The attorneys supporting the complaints took an interlocutory appeal from these rulings and the Commission with certain limitations, upheld their contention that evidence was to be received as to all such sales commission arrangements (Order Sustaining Interlocutory Appeal issued December 5, 1956).

This determination was based on the ground that the rejected evidence "was relevant and material to the direct issues thus raised by the complaint."

255 Although the danger that this would produce in certain instances duplication of issues in the three proceedings before the same Hearing Examiner was called to the Commission's attention, the Commission did not treat this matter in its order.

The Duplication of Evidence.

At the time of the interlocutory appeal, it appeared that counsel supporting the complaint intended to avoid or minimize the problem arising from the duplication of issues in contemporaneous proceedings pending before the same Hearing Examiner.

On the interlocutory appeal the attorney supporting the complaint represented that evidence as to non-respondent oil companies would be restricted. He asserted:

"It is not necessary, under the circumstances herein, to adduce evidence with respect to Goodyear's agreements with 'other oil companies' to the same extent as with respect to Goodyear's agreement with Atlantic." (Interlocutory Appeal Brief, November 9, 1956, p. 17.)

256 Furthermore, during the bulk of the hearings, the attorney supporting the complaint avoided the taking of testimony with respect to non-respondent oil companies.

Indeed, counsel rested his case without introducing any testimony as to most of Goodyear's arrangements with non-respondent oil companies. Evidence as to such oil companies was confined to the agreements themselves, plus a few sales statistics.

Toward the end of the hearing in the *Goodyear-Atlantic* case, the attorney supporting the complaint did, however, call to the stand a number of witnesses as to the operation of the Goodyear-Shell sales commission plan. These included two former Shell dealers (Hooper, Tr. 1937 *et seq.*, Edwards, Tr. 2037 *et seq.*) and persons who competed for the business of Shell dealers (Govoruhk, Tr. 1545 *et seq.*, Norris, Tr. 1692 *et seq.*, Migan, Tr. 1699 *et seq.*, Savage, Tr. 1727 *et seq.*, Best, Tr. 1828 *et seq.*, Lang, Tr. 1861 *et seq.*, Scheiner, Tr. 1965 *et seq.*, Sander, Tr. 2011 *et seq.*).

257 Up to this point there had been no field testimony taken in the *Firestone-Shell* proceeding.

The problem of serious overlapping of testimony as to the legality of the Goodyear-Shell sales commission arrangement became evident to Goodyear just prior to the testimony of the last witness in the *Goodyear-Atlantic* case. On this occasion counsel supporting the complaint called as his witness a former Shell employee who also was a former Shell dealer to testify in detail as to the operations of the Goodyear-Shell sales commission plan.

Prior to calling the witness, the attorney supporting the complaint informed counsel for Goodyear that the hearings were being scheduled so as to permit the same witness to testify on the same or subsequent day in the *Firestone-Shell* case (Tr. 2034).

Although no error would be committed until the witness was called in the *Firestone-Shell* proceeding, counsel for

Goodyear felt constrained to call to the attention of
258 the Hearing Examiner the fact that the situation was

pregnant with error and that Goodyear's constitutional rights would be violated if the Hearing Examiner proceeded to receive such testimony as to the Goodyear-Shell sales commission arrangements in another proceeding (Tr. 2034-2036).

Thereafter, the Hearing Examiner permitted the witness to testify in both proceedings (Docket 6486, Tr. 2037-2214; Docket 6487, Tr. 506-655).

In addition, the Hearing Examiner proceeded a few days later to hold extensive hearings on the Goodyear-Shell sales commission plan in the *Firestone-Shell* proceeding.

We have now learned that additional hearings are scheduled in the *Firestone-Shell* proceedings in which at least fourteen witnesses who have previously testified in the *Goodyear-Atlantic* proceeding will be called to the stand.

Several of such witnesses will undoubtedly testify once again on the subject of the Goodyear-Shell sales commission arrangement.

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Point I.

Goodyear Is Being Deprived of Its Rights to Procedural Due Process Under the Constitution and the Administrative Procedure Act.

We have been unable to find any case dealing with the extraordinary situation here involved—that of a Hearing Examiner in one proceeding contemporaneously presiding over an adjudication of the same issue of fact and law in another proceeding in which one of the parties is not present.

There are no analogies to the situation in the function of courts. It would not be usual for a judge to try more than one case at the same time.

The instant situation does, however, come exactly within the condemnation of a specific provision of the Adminis-

trative Procedure Act. Thus Section 5(c) of that Act, provides, in pertinent part:

"Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer 260 [Hearing Examiner] shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate."

This is, of course, not a situation where an ex parte consideration of evidence is authorized by law. Plainly by hearing the testimony of witnesses and by consulting with and hearing arguments of counsel in another case, the Hearing Examiner is consulting persons on facts in issue without the opportunity for Goodyear to participate.

The attorney supporting the complaint may argue that although this section of the Act specifically and literally reads upon the present situation that it should not be applied because it was directed at a more common abuse. That abuse was that of consultation by the Hearing Examiner of an agency with the investigative or other staff of the agency. There is no justification for giving the statute any such limited construction.

For one thing, it is clear that the draftsmen of the provision had no intention of restricting the prohibi- 261 tion merely to contacts with members of the agency.

If that had been intended it could have been simply stated. In the sentence immediately following, there is, moreover, a specific provision against members of the investigative staff of an agency advising in connection with a decision.

What the section obviously was addressed to was the receipt of information by a Hearing Examiner as to a fact in issue before him in a pending proceeding from anyone, whether within or without the agency, without the opportunity for the parties involved to participate.

The receipt of information by presiding over a co-pend-

ing proceeding involving the identical fact issue where a party to the first proceedings is not represented, violates both the literal scope and spirit of the prohibition.

Apart from the specific provision of Section 5(c), it is plain that the procedure now being followed by the 262 Hearing Examiner violates the purpose of a number of sections of the Administrative Procedure Act codifying rights under the constitutional guarantees of due process.

Once it is accepted that it is impossible for a Hearing Examiner in the present situation to avoid importation of knowledge received from the one proceeding into his decision with respect to the other, it is plain that the unrepresented party is being denied the right to appear by counsel, the right to conduct cross-examination and the right that the proceeding against him be decided only on the record of that proceeding (Administrative Procedure Act, §§ 6(a), 7(c) and 7(d)).

Point II.

The Hearing Examiner's Ruling was Based on Erroneous Premises.

The Hearing Examiner in his order of January 2, 1958 denying our motion, stated as follows:

263 "It is respondents' contention that because of the reception of evidence by the same hearing examiner concerning the Goodyear-Shell Oil Company Sales Commission Plan in both this proceeding and in Docket No. 6487 in which The Firestone Tire & Rubber Company and Shell Oil Company are respondents, deprives the respondents of their rights to a fair hearing.

"The hearing examiner in making his initial decision must issue a finding of fact which must be based upon the record in the proceeding in which such finding is made. It would be unlawful and in violation of the Administrative Procedure Act for the hearing examiner to give consideration to any matters not

appearing in the record. The motion of respondents is based upon the premise that the hearing examiner cannot or will not proceed lawfully in the issuance of an initial decision in this proceeding.

"It is the opinion of the hearing examiner that there is no merit to respondents' contention."

With all due deference and respect to the Hearing Examiner, it seems plain that his reasoning merely begs the question. The fact that he must by law confine his determination to the record, does not remove his disability so to do. It does not change the fact that compartmentalization of one's mind to remove impressions and information derived from another contemporaneous case is a physical impossibility.

264 There is, moreover, a more subtle way in which respondents Goodyear will be prejudiced by efforts of the Hearing Examiner to confine his decision to the record.

It seems fair to assume that the Hearing Examiner appreciates that in any attempt to appraise the credibility of witnesses on the basis of their demeanor before him, it would be impossible to segregate impressions received as to the same witness in the two proceedings.

What the Hearing Examiner must intend is to avoid taking into account the conduct of the witness before him and, by some extraordinary mental effort, attempt to decide the case as if he were merely reading the dry record.

This in itself would deprive Goodyear of the benefit of one of the most important functions of the Hearing Examiner—a function which is particularly important in this case.

265 This case brings into question the conduct of oil companies with respect to their dealers. As is usual in such cases, much of the testimony adduced by the Commission involves that of a selected group of disgruntled former dealers with obvious bias against the oil company.

Additionally, there is the interested testimony of marginal TBA suppliers who as competitors of the tire company are also interested witnesses.

There is, moreover, already of record considerable conflict in testimony as to what was said to dealers by company employees and as to what the dealers reported to others had been said to them by company employees. These conflicts will undoubtedly be multiplied when the defense case is presented.

The accurate appraisal of the credibility of such biased and interested testimony and the resolution of conflicts in testimony can only be accomplished by an impartial appraisal of the credibility of the witnesses by the Hearing Examiner derived from observing their demeanor and conduct in open proceedings.

266 See, *Gamble-Skogmo, Inc. v. Federal Trade Commission*, 311 F. 2d 106 (8th Cir. 1954).

Against this background, any attempt by the Hearing Examiner to decide this case as if he were merely reading the dry record, would in and of itself involve a violation of due process.

As stated in *S. Buchsbaum & Co. v. Federal Trade Commission*, 153 F. 2d 85 (7th Cir. 1946):

"Congress has authorized the appointment of Examiners in such cases and they are the eyes and ears of the Commission. There is no complaint as to this delegated power, but it certainly cannot be said that the appointment would free the Examiner from the duty of observing the demeanor of witnesses, for this would amount to a lack of due process to which petitioner is entitled." (p. 87.)

Point III.

The Authorities Advanced In Opposition to the Motion
Were Not Pertinent.

In opposing our motion before the Hearing Examiner, the attorney supporting the complaint placed main
267 reliance on two cases which are not pertinent to the issues raised by the motion.

The first of these cases was *Federal Trade Commission v. Cement Institute, et al.*, 333 U. S. 683, 700-703 (1948). In the *Cement Institute* case, respondents claimed that the Commission was disqualified to pass upon the basing point system of the cement industry because the Commission had previously reported to Congress its view that it was illegal.

Thus this situation did not involve any contemporaneous receipt of information through the trial of another proceeding in which the parties were not represented. It involved instead merely a claim of prejudice from having expressed an opinion on the same general subject.

Moreover, there does not appear to have been any contention that the Commission was unable to resolve contested fact issues before it without reference to information outside of the record.

268 In sustaining the qualifications of the Commission to try the basing point case, the Supreme Court (333 U. S. 700-703), analogized the situation to that of a judge assigned to retry a case after reversal on appeal.

That situation is substantially different from the situation here presented.

One fundamental distinction is that parties to the retrial have been represented in the earlier one. Thus there is no problem of receipt of evidence in a proceeding where a party was not represented. Also, the evidence introduced

at the first trial, unless ruled inadmissible on appeal, is generally available upon retrial.

There is, moreover, an obvious distinction between consecutive trials of the same issue where the parties are aware of what has gone before and contemporaneous hearings of the same issue where the non-represented party is debarred from participating in the second proceeding:

269 The second authority relied on by the attorneys supporting the complaint is *Whitaker Cable Corporation v. Federal Trade Commission*, 239 F. 2d 253, 7th Cir. 1956). In that case the Hearing Examiner apparently, during the trial of a Section 2(a) proceeding, accepted an assignment to the trial of a 2(f) proceeding involving in part some of the same transactions. It does not appear from either the opinion of the Court of Appeals or that of the Commission, to what extent the evidence actually received covered the same fact issues.

Furthermore, it appears that at least before the Commission, the respondent company did not raise the same issues as here. As indicated in the Commission's opinion (Docket No. 5722, April 29, 1955), the respondent's contention was "that the implied effect of the examiner's accepting the appointment and proceeding to take evidence in another hearing was that this case had already been adjudicated" (p. 2).

Thus the assertion of impropriety was that acceptance of the appointment to try the new proceeding showed
270 pre-judgment of the earlier proceeding, rather than the prejudice to be derived from the receipt of testimony in the second proceeding.

The Court of Appeals in upholding the Examiner's conduct stated as follows:

"Finally, petitioner complains that the hearing examiner in this proceeding also held a hearing in a

factually related matter in which petitioner did not participate. That proceeding involved eight automotive parts jobbers charged with knowingly inducing and receiving discriminatory prices by means of a group buying arrangement in violation of Section 2(f) of the Clayton Act, as amended. Petitioner was not a party to that proceeding and the issues were not the same as those involved in the instant case. Any order that might have issued in that proceeding could not have affected or prejudiced petitioner. We fail to see in what manner petitioner was prejudiced and petitioner does not indicate in what way it was prejudiced other than its assertion that such conduct by the hearing examiner violated 'concepts of basic fairness.' But, see *Dolcin Corp. v. Federal Trade Commission*, App. D. C. 219 F. 2d 742, 745-46, 'cert. denied 348 U. S. 981; cf. *Federal Trade Commission v. Cement Institute*, 333 U. S. 683, 700-703.' (pp. 256-257.)

It is to be noted that here, unlike the *Whitaker* case, the issue of fact and law as to the Goodyear-Shell sales 271 commission plan is identical both in the *Goodyear-Atlantic* and *Firestone-Shell* proceedings. It is also to be noted, since the sales commission plan is terminable on short notice, that an order in either proceeding will directly affect Goodyear.

Reference should also be made to the case *Dolcin Corporation v. Federal Trade Commission*, 219 F. 2d 742 (D. C. Cir. 1954). The facts of that case are also different from the situation here presented.

There the parties in a second proceeding before the same Hearing Examiner had stipulated that medical evidence as to a questioned drug in the first proceeding would form part of the record in the second case involving a similar drug. The Hearing Examiner decided the second case first, and the Commission affirmed.

The complaint of the respondent was not against the

receipt of evidence in the second proceeding but the fact that at the time of his oral argument before the

Commission, the issue had in effect been already decided. Thus the assertion was made that the Commission may have been prejudiced by the prior argument.

The court held that these facts were insufficient to show bias or disqualification on the part of the Commission. The Court noted that the respondent had not taken such steps as were open to him to have delayed the determination in the second proceeding.

Conclusion.

The proceedings before the Hearing Examiner involve a substantial violation of respondents Goodyear's rights to constitutional due process. They also involve a direct violation of specific provisions of the Administrative Procedure Act.

The motion before the Hearing Examiner is designed to cure the error so injected into the proceedings. Accordingly, the motion should have been granted by the Hearing Examiner and his denial of the motion should be reversed in this interlocutory appeal.

Dated: January 31, 1958.

Respectfully submitted,

Cahill, Gordon, Reindel & Ohl,

By Mathias F. Correa,

Mathias F. Correa,

63 Wall Street,

New York 5, New York,

*Attorneys for The Goodyear
Tire & Rubber Company
and The Goodyear Tire &
Rubber Company, Inc.*

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UNITED STATES OF AMERICA

Before Federal Trade Commission.

• • (Caption—6486) • •

**ANSWER IN OPPOSITION TO INTERLOCUTORY
APPEAL OF RESPONDENTS THE GOODYEAR
TIRE & RUBBER COMPANY AND THE GOODYEAR
TIRE & RUBBER COMPANY, INS.**

Come now counsel in support of the complaint, pursuant to Section 3.20(b) (1) of the Commission's Rules of Practice, and, in answer to the Interlocutory Appeal of Respondents The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc., both of whom are hereinafter referred to jointly as respondent Goodyear, filed on January 31, 1958, state that (1) said Appeal should not be entertained by the Commission; (2) if entertained, said Appeal should be denied, and (3) request for oral argument should be denied, for the reasons hereinafter set forth.

I. History.

On December 2, 1957, counsel for respondent Goodyear filed a Motion to Withdraw Issues and to Strike Evidence with the Hearing Examiner, specifically praying for an order granting the following relief:

- “(a) Withdrawing from this proceeding any issue legal or factual as to the Goodyear-Shell Oil Company Sales Commission Plan.
- “(b) Striking all evidence heretofore received in this case with respect to the Goodyear-Shell Oil Company Sales Commission Plan.”

278 Respondent Goodyear's motion cited certain “reasons” why such relief should be granted, namely, that

identical legal and factual issues as to the Goodyear-Shell Sales Commission Plan are raised both in this proceeding and in Docket No. 6487, in which The Firestone Tire & Rubber Company and Shell Oil Company are respondents; that the same Hearing Examiner has been assigned to hear testimony, receive evidence and determine the issues in both proceedings; that one witness already has testified, and other witnesses may testify, in both proceedings concerning the Goodyear-Shell Oil Company Sales Commission Plan; that the testimony of the one witness (Edwards) who has already testified in both proceedings differed in material respects as between the two proceedings; that there is reason to believe that if the present course is followed, the Hearing Examiner will receive additional evidence and testimony in Docket 6487 concerning the Goodyear-Shell Oil Company Sales Commission Plan which may involve, in some instances, witnesses who have testified in this proceeding. Respondent Goodyear stated that, for the "reasons" stated, "it has been and is being deprived of its rights to a fair hearing as guaranteed by the Constitution and laws of the United States." No authorities were cited by respondent Goodyear in support of said motion.

Counsel supporting the complaint filed an Answer in Opposition to said motion on December 12, 1957, in which it was stated that evidence relating to the Goodyear-Shell Oil Company Sales Commission Plan comes within the scope of the complaint in this proceeding pursuant to the Commission's Order Sustaining Interlocutory Appeal, issued December 5, 1956, and further, assuming arguendo that the same legal and factual issues are present in both this proceeding and Docket 6487 with respect to the Goodyear-Shell Oil Company Sales Commission Plan, it does not and will not deprive respondent Goodyear of a fair hearing in this proceeding.

The Hearing Examiner, on January 2, 1958, entered an

Order Denying Motion of respondent Goodyear, in which he stated in part:

"The hearing examiner in making his initial decision must issue a finding of fact which must be based upon the record in the proceeding in which such finding is made. It would be unlawful and in violation of the Administrative Procedure Act for the hearing examiner to give consideration to any matters not appearing in the record.

279 "The motion of respondents is based upon the premise that the hearing examiner cannot or will not proceed lawfully in the issuance of an initial decision in this proceeding.

"It is the opinion of the hearing examiner that there is no merit to respondents' contention."

It should be noted that respondent Shell Oil Company in Docket 6487 filed a motion with the Hearing Examiner to withdraw the Goodyear-Shell Oil Company Sales Commission Plan issues from that proceeding. Respondent Shell's motion was also denied by the Hearing Examiner and is presently on Interlocutory Appeal to the Commission.

II. The Interlocutory Appeal Should Not Be Entertained As the Issues Raised Therein Have Already Been Ruled Upon by the Commission.

The Interlocutory Appeal of respondent Goodyear should not be entertained by the Commission as it raises issues which were ruled upon by the Commission in its Order Sustaining Interlocutory Appeal issued December 5, 1956. Events leading to the Commission's Order of December 5, 1956, may be summarized as follows:

The complaint in the instant matter alleges, inter alia, that respondent Goodyear has entered into TBA Sales Commission Plans with respondent The Atlantic Refining Company, and with other oil companies, including the Shell Oil Company, which is specifically named in the complaint

(Paragraph Nine), in violation of Section 5 of the Federal Trade Commission Act, for reasons set forth in the complaint. The complaint alleges (Paragraph Nine) that respondent Goodyear made sales amounting to \$11,857,287 in 1951, and \$16,595,761 in 1952, on which it paid the Shell Oil Company commissions, under the Sales Commission Plan, of \$1,091,385, and \$1,523,122, respectively, for those years.

During the course of the hearings held on October 30, 1956, counsel supporting the complaint offered in evidence a number of documents in support of the allegations of Paragraph Nine of the complaint relating to respondent Goodyear's Sales Commission Plans with oil companies

other than respondent Atlantic. Certain of the offered 280 documents related specifically to the Goodyear-Shell Oil Company Sales Commission Plan (CX ID 55, 59A-E). The Hearing Examiner ruled that all of such offered documents, including CX ID 55 and 59A-E, were inadmissible. (Tr. 53, 54.) This ruling, among others, was appealed to the Commission by counsel supporting the complaint, and reference is herewith made to the Interlocutory Appeal Brief of counsel supporting the complaint filed November 9, 1956, in this regard.

The prior Interlocutory Appeal of counsel supporting the complaint filed November 9, 1956, squarely raised the issue which respondent Goodyear now raises for the second time. Counsel supporting the complaint, in its Interlocutory Appeal Brief, defined the issue at page 7 therein as follows:

"Statement of the Issue.

"Where the allegations of a complaint challenge a method of doing business, are similar acts and practices employed by a respondent *with another or others not parties to the proceeding* admissible in evidence in proving the scope, effect and unlawfulness of the challenged acts and practices?" (Emphasis supplied.)

Under section IV, E, (pp. 16, 17) of said Interlocutory Appeal Brief, counsel supporting the complaint contended that "the rejected evidence relating to 'other oil companies' is relevant to the issues" raised by the complaint.

Respondent Goodyear, in its Answering Brief, filed November 26, 1956, opposing said Interlocutory Appeal, joined issue, inter alia, on the relevancy of evidence relating to respondent Goodyear's Sales Commission Plans with non-respondent oil companies, including Shell Oil Company (see pp. 8, 9, 11-14 thereof).

Counsel for respondent Goodyear also directed the Commission's attention to the three complaints attacking the Sales Commission Plan (Dockets 6485, 6486 and 6487) and argued that such complaints "are virtually identical except for the companies named as respondents" (p. 3); and that there was "a confusing overlap of factual allegations among the three parallel complaints" (p. 4), citing as examples, among others, that "Goodyear is involved in the Firestone case, in which it is not a party; . . . and

Shell is involved in the Goodyear case, in which it is not a party" (p. 5). Because of such "duplication of issues," it was argued that the hearing examiner's ruling should be affirmed.

Counsel for respondent Goodyear based its opposition to the Interlocutory Appeal of counsel supporting the complaint in major part on the "duplication of issues" argument, which it now raises for the second time throughout its present Interlocutory Appeal.

It is interesting to note that counsel for respondent Goodyear argued, at pages 11-14 of their Answering Brief, that counsel supporting the complaint intended "to omit proof on the one critical fact necessary to lend the least semblance of relevancy in these proceedings to Goodyear's relations with the non-respondent oil companies—the alleged identity of control by the oil companies of their dealers."

This conclusion was based on an erroneous construction of certain language in the Interlocutory Appeal Brief of counsel supporting the complaint and, in fact, such evidence was subsequently introduced into the record by counsel supporting the complaint. It is such evidence as relates to the Goodyear-Shell Oil Company Sales Commission Plan which now forms the basis for respondent's Interlocutory Appeal. In short, counsel for respondent Goodyear now move to strike the very evidence which they previously considered to be of the utmost evidentiary significance and relevancy in this proceeding!

The Commission entered its Order Sustaining Interlocutory Appeal on December 5, 1956, in which it stated, in part, as follows:

"It appearing that the basis for the rulings complained of was that evidence of the relationships between Atlantic and Firestone and between Goodyear, Inc., and oil companies other than Atlantic have no bearing on the issues in this proceeding, which proceeding is concerned only with the contractual relationship between Atlantic and Goodyear, Inc., and the acts and practices engaged in pursuant thereto; and

282 "It further appearing, however, that the allegations of the Complaint are not limited to the existence of and activities under the commission contract between respondent Atlantic and Goodyear, Inc., but relate also to a *general course of competitive action* by each of said respondents, under which . . . respondent Goodyear, Inc., is alleged to have unlawfully entered into and acted under similar contracts with a number of oil companies, *including Shell Oil Company* and Atlantic, providing for the payment by it to said oil companies of commissions on the sales of all tires, batteries and accessories sold by Goodyear, Inc., to service stations controlled by said oil companies; and

"The Commission being of the opinion that the evidence rejected by the hearing examiner apparently

was relevant and material to the direct issues thus raised by the complaint and that, if so, it should have been received in support of said issues." (Emphasis supplied.)

Whereupon, the Commission ordered that the hearing examiner receive into the record "such relevant, material and reliable evidence as has been or may be offered concerning the details, operation and competitive effects of the override commission contract *between . . . respondent Goodyear, Inc., and each of a number of oil companies other than respondent Atlantic.*" (Emphasis supplied.) It was further ordered that such testimony should be admitted as against respondent Goodyear, Inc., unconditionally and as against respondent Atlantic subject to a subsequent motion to strike upon a proper showing.

Evidence has been received by the Hearing Examiner in accordance with the Commission's order of December 5, 1956, and it is certain of such evidence which now forms the basis of respondent Goodyear's Motion to Withdraw Issues and to Strike Evidence relating to the Goodyear-Shell Sales Commission Plan in their Interlocutory Appeal.

Counsel for respondent Goodyear blithely attempt to distinguish the issues ruled upon in the Commission's prior order of December 5, 1956, from the issues raised by its present Interlocutory Appeal as follows:

283 "This [prior] determination was based on the ground that the rejected evidence 'was relevant and material to the direct issues thus raised by the complaint.'

"Although the danger that this would produce in certain instances *duplication of issues* in the three proceedings before the same Hearing Examiner was called to the Commission's attention, *the Commission did not treat this matter in its order.*" (Emphasis supplied.)

This presumed distinction between the issues previously resolved and the issues raised by the present interlocutory appeal, which is the only distinction advanced, is without merit because it is obvious that the Commission must have considered the fact that the same Hearing Examiner was assigned to this proceeding and to Dockets 6485 and 6487; that the three complaints attacked the TBA override commission arrangements between certain tire companies and oil companies; that certain of the respondents named in such complaints were also non-respondents in other of the three complaints; and that allegations relating to the Goodyear-Shell Oil Company Sales Commission Plan were involved both in this proceeding and in Docket 6487. All such matters, including the "duplication of issues" argument of counsel for respondent Goodyear, and related matters, were before the Commission at that time and had to be resolved before the Commission ruled as it did in its Order of December 5, 1956.

For the reasons stated, we contend that the issues now raised by counsel for respondent Goodyear in their Interlocutory Appeal have already been ruled upon by the Commission and, therefore, such Appeal should not be entertained by the Commission, as it does not come within the provisions of Section 3.20 of the Commission's Rules of Practice governing Interlocutory Appeals.

III. The Interlocutory Appeal, If Entertained, Should Be Denied.

While we contend that all of the issues raised by the present Interlocutory Appeal necessarily were resolved and ruled upon by the Commission in its Order of December 5, 1956, we further respectfully submit that, if the Interlocutory Appeal is entertained, it should be denied, for the following reasons.

A. The Issue.

The basic issue raised by respondent Goodyear may be stated as follows:

Does the fact that the same Hearing Examiner is receiving oral testimony in another case (Docket 6487), in which respondent Goodyear is not a part, and which involves allegations relating to the Goodyear-Shell Oil Company Sales Commission Plan, deprive respondent Goodyear of procedural due process under the Constitution and laws of the United States in this proceeding.

Counsel for respondent Goodyear contend that, "wholly ex parte to respondents Goodyear, the Hearing Examiner is receiving a large amount of information [in Docket 6487] as to the facts of this case, is hearing the argument of counsel and is inevitably forming impressions, opinions and conclusions as to the credibility of witnesses and issues of fact directly involved in this case. * * * under the circumstances of this case, it is humanly impossible to avoid importing into this case impressions and conclusions formed in the other." (Interlocutory Appeal Brief, p. 3.)

In determining whether respondent Goodyear's fundamental rights to procedural due process are being violated in this proceeding, it is only necessary to determine whether said respondent is being accorded a fair hearing under the Administrative Procedure Act, for as stated by Senator McCarran in discussing said Act in the Senate on March 12, 1946, prior to its passage:

"[The Administrative Procedure Act], the purpose of which is to improve the administration of justice by prescribing fair administrative procedure, is a bill of rights for the hundreds of thousands of Americans whose affairs are controlled or regulated in one way or another by agencies of the Federal Government. It is

designed to provide guaranties of due process in administrative procedure." (Emphasis supplied.) (Senate Doc. No. 248, 79th Cong., 2d Session, p. 298.)

285 Counsel for respondent Goodyear raise various arguments in support of their position, all of which center around the fact that the same Hearing Examiner is the presiding officer in this proceeding and in Docket 6487, in which respondent Goodyear is not a party, in both of which proceedings allegations are involved relating to the Goodyear-Shell Oil Company Sales Commission Plan, and in both of which oral testimony is being received into the record with respect thereto. The lack of merit to such contentions as they relate to the Administrative Procedure Act is set forth hereinafter.

B. Section 5(c) of the Administrative Procedure Act Is Not Being Violated in This Proceeding.

Counsel for respondent Goodyear argue under Point I (pp. 13-16) of their brief that Section 5(c) of the Administrative Procedure Act is being violated under the circumstances here present. They admit, however, that they "have been unable to find any case" in support of such contention.

Section 5(c) of the Administrative Procedure Act is entitled Adjudication, and reads as follows

"(c) Separation of Functions—The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8 except where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the

supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as witness or counsel in public proceedings. * * * (Emphasis supplied.)

286 The underscored clause above is that portion of Section 5(c) which counsel for respondent Goodyear contend is being violated. As stated by them, at page 14 of their brief: "Plainly by hearing the testimony of witnesses and by consulting with and hearing arguments of counsel in another case, the Hearing Examiner is *consulting* persons on facts in issue without the opportunity for Goodyear to participate." (Emphasis supplied.)

It is only necessary to read Section 5(c) in its entirety and to review the legislative history thereof to place it in proper perspective. The Section is entitled "Separation of Function." and it patently is directed at separating the adjudicative function from the investigative and prosecutive functions of administrative agencies.

The Report of the Senate Committee on the Judiciary on the Administrative Procedure Act, submitted November 19, 1945, summarizes the provisions of Section 5(c) as follows:

"(c) Separation of Functions—Officers who preside at the taking of evidence must make the decision or recommended decision in the case. They may not consult with any person or party except openly and upon notice, save in the disposition of customary ex parte matters, and they may not be made subject to the supervision of prosecuting officers. The latter may not participate in the decisions, except as witness or counsel in public proceedings. * * *

"The gist of the subsection is that no investigating

or prosecuting officer shall directly or indirectly in any manner influence or control the operations of hearing and deciding officers, except as a participant in public proceedings, and even then in no different fashion than the private parties or their representatives." (Senate Doc. No. 248, 79th Cong., 2d Session, p. 203.)

The Report of the House Committee on the Judiciary, on the Administrative Procedure Act, submitted May 3, 1946, likewise states with respect to Section 5(c):

"The purpose of this section is to assure that no investigating or prosecuting officer shall directly or indirectly in any manner influence or control the operations of hearing and deciding officers, except as a participant in public proceedings, and even then in no different fashion than the private parties or their representatives. The separation of functions here required must be reflected in the rules of organization and procedure issued pursuant to section 3(a). * * *"
(Senate Doc. No. 248, supra, p. 262.)

The separation of functions provision of Section 5(c) is embodied in Section 3.15(e) of the Commission's Rules of Practice, and reference is made thereto.

The obvious purpose of Section 5(c) of the Administrative Procedure Act, and Section 3.15(e) of the Commission's Rules of Practice, is to maintain the judicial independence of Hearing Examiners in adversary proceedings before administrative agencies.

Counsel for respondent Goodyear are far afield when they contend that the Hearing Examiner in this proceeding is consulting with witnesses and counsel in Docket 6487 in violation of the provisions of Section 5(c). To say that the Hearing Examiner herein is consulting with counsel for respondents Shell Oil Company and The Firestone Tire & Rubber Company, as well as with counsel supporting the complaint, ~~the~~ ^{and} witnesses, in Docket 6487, does violence not only to any recognized definition of the

word "consult", but also to the spirit and purpose of Section 5(c).

The Hearing Examiner herein is not consulting with anyone when he sits as the presiding officer in another adversary proceeding (Docket 6487) in which he must reach a judicial determination based on the evidence adduced by both sides in that proceeding. For this reason, counsel for respondent Goodyear's further argument that they are entitled to "notice and opportunity . . . to participate" in Docket 6487 within the meaning of Section 5(c) is based on an unwarranted construction of Section 5(c), and is entirely without merit.

C. Other Provisions of the Administrative Procedure Act Are Not Being Violated In This Proceeding.

Counsel for respondent Goodyear also contend, at page 16 of their brief, that Sections 6(a), 7(c) and 7(d) of the Administrative Procedure Act are being violated because said respondent is "being denied the right to appear by counsel, the right to conduct cross-examination and the right that the proceeding against [Goodyear] be decided only on the record [of this proceeding]."

This argument contains two principal contentions, namely, (1) that respondent Goodyear has a right to participate in Docket 6487, under Section 6(a) of said Act, and (2) that the Hearing Examiner is importing "knowledge received" from Docket 6487 into the record in this proceeding and therefore must go beyond the record to reach his decision herein, in violation of Sections 7(c) and 7(d) of said Act.

I.

With respect to the first contention set forth above, it is well settled that it is not necessary for an administrative agency to name all parties to an agreement or contract as

respondents in a complaint in order to determine whether such agreement or contract is in violation of a Federal statute.

In the area of public law the rights and interests of the public are of primary concern, and not the private rights of individual parties. Because of this different perspective, there is little, if any, need for the rules governing indispensable or necessary parties in private litigation. As stated by the United States Supreme Court in *National Licorice Co. v. NLRB*, 309 U. S. 350, 363, 366 (1940):

“In a proceeding so narrowly restricted to the protection and enforcement of public rights, there is little scope or need for the traditional rules governing the joinder of parties in litigation determining private rights.

“... in proceedings before the Federal Trade Commission, the order restraining unfair methods of competition may preclude the performance of outstanding contracts by the offenders. Such orders have never been challenged because the holders of the contracts were not made parties. E.g. *Butterick Co. v. Federal Trade Commission*, 4 F. 2d 910; *Q. R. S. Music Co. v. Federal Trade Commission*, 12 F. 2d 730; *J. W. Kobi Co. v. Federal Trade Commission*, 23 F. 2d 41. Cf. *Federal Trade Commission v. Beech-Nut Co.*, 257 U. S. 441.” (Emphasis supplied.)

289 The Commission was under no legal compulsion to name Goodyear as a respondent in Docket 6487. Not being a party thereto, respondent Goodyear has no right to appear by counsel, or to conduct cross-examination, in such proceeding.

It is important to observe, however, that respondent Goodyear is being accorded the rights of a party in this proceeding, which also attacks the legality of the TBA Sales Commission Plan, including the right of due notice, cross-examination, presentation of evidence, objection, mo-

tion, argument, and all other fundamental rights, including the right of appeal, as provided in the Administrative Procedure Act and as embodied in Section 3.16(b) of the Commission's Rules of Practice. It is being, and will be, afforded every opportunity to defend the allegations of the complaint herein, so that its protestations concerning an alleged lack of "due process" in this proceeding are entirely without foundation.

Reference is also made to the Interlocutory Appeal Brief of counsel supporting the complaint filed November 9, 1956, at pages 19-21, wherein it was stated that it is not necessary for an administrative agency to name all parties to an agreement as respondents in a complaint to determine the legality of an alleged unfair method of competition. This contention necessarily was one of the factors taken into consideration by the Commission in ruling as it did in its Order Sustaining Interlocutory Appeal of December 5, 1956.

Counsel for respondent Goodyear did not challenge this prior contention of counsel supporting the complaint in their reply brief filed November 26, 1956, and even now do not cite any authorities in support of their position that they are a necessary party to Docket 6487.

II.

The second contention of counsel for respondent Goodyear, as set forth above, is that the Hearing Examiner is importing "knowledge received" from Docket 6487 into the record in this proceeding and therefore must go beyond the record herein to reach his decision, in violation of Sections 7(c) and 7(d) of the Administrative Procedure Act.

290 This argument runs throughout counsel's Appeal Brief and arises in various places therein (e.g. pp. 2-7, 9-12, 16). It is based on an alleged duplication of issues

and duplication of evidence in this proceeding and Docket 6487 with respect to the Goodyear-Shell Oil Company Sales Commission Plan.

Counsel for respondent Goodyear contend that the complaint herein raises a separate legal issue as to each of Goodyear's sales commission agreements with Atlantic and approximately twelve other oil companies, including Shell Oil Company, thereby raising approximately thirteen legal issues in all. By applying this same reasoning to Docket 6487, they argue that the Goodyear-Shell Oil Company agreement, among others, presents a separate legal issue in that proceeding, thus resulting in a "duplication of issues" as between this proceeding and Docket 6487. Based on their construction of the two complaints, they conclude that the legality of the Goodyear-Shell Oil Company Sales Commission Agreement is a separate issue in each case, and further conclude that each of the numerous other Sales Commission Agreements alleged in both complaints raises separate issues as to their legality. It is on the basis of this reasoning that they rest their Interlocutory Appeal.

The foregoing argument of counsel for respondent Goodyear was rejected and effectively answered by the Commission in its Order of December 5, 1956, when it ruled that the allegations of the complaint herein "relate . . . to a general course of competitive action", and not solely to the Sales Commission Agreement between the named respondents, Goodyear and Atlantic.

Viewed in its proper perspective, the legality of the Goodyear-Shell Oil Company Sales Commission Agreement is not a separate issue to be determined in either this proceeding or Docket 6487. The basic issue common to both cases, as well as to Docket 6485, is whether the method, plan or system of merchandising TBA products through oil company outlets by means of overriding sales commission agreements constitutes "a general course of competi-

tive action" in violation of Section 5 of the Federal Trade Commission Act.

291 Neither the complaint in this proceeding nor in Docket 6487 raises separate issues with respect to each separate Sales Commission Agreement, and, for this reason, the arguments of counsel for respondent Goodyear are based on an erroneous and rejected premise from their very inception.

Nevertheless, counsel for respondent Goodyear argue that they are being prejudiced in this proceeding because certain witnesses testified herein and also in Docket 6487 with respect to the Goodyear-Shell Oil Company Sales Commission Agreement. Counsel argue that it is "impossible" for the Hearing Examiner to "avoid importation of knowledge received" in Docket 6487 into the record in this proceeding, in violation of Sections 7(c) and 7(d) of the Administrative Procedure Act.

The names of the witnesses referred to by counsel are set forth at page 10 of their brief, as follows: Edwards, Hooper, Govoruhk, Norris, Migan, Savage, Best, Lang, Scheiner, and Sander. All of these witnesses testified in this proceeding, and counsel were of the belief that certain of them would subsequently be called as witnesses in Docket 6487. (Only witness Edwards had testified in both cases up to the filing of the Interlocutory Appeal.) However, only five of the ten listed witnesses in this proceeding actually appeared as witnesses in Docket 6487, viz: Edwards, on November 26, 1957, and Hooper, Savage, Lang, and Scheiner on February 3, 1957.

The heart of respondent Goodyear's appeal centers on the oral testimony of these five witnesses, particularly that of witness Edwards (see p. 2 of Respondent's Motion filed December 2, 1957). For this reason, it is important to consider the circumstances surrounding the testimony of such witnesses in this proceeding:

1. Witness Edwards.

Counsel for respondent Goodyear were advised by counsel supporting the complaint on October 18, 1957, that William E. Edwards would be called to testify in this matter on November 26, 1957. Such disclosure was in accordance with an oral agreement between counsel to inform one another of the names of prospective witnesses at least 30 days in advance of hearing date, if possible, to afford an opportunity for counsel to prepare for cross-examination at the immediate conclusion of direct examination of a witness. At that time, counsel for respondent Goodyear were also advised that Mr. Edwards had previously publicly testified on April 30, 1957, before the (Roosevelt) Subcommittee No. 5 of the House of Representatives Select Committee on Small Business, on Distribution Practices in the Petroleum Industry.

Witness Edwards, who was formerly a District Sales Representative for the Shell Oil Company, and also a Shell Service Station Dealer, was called as a witness in this proceeding on the morning of November 26, 1957 (Tr. 2033-2083). At the conclusion of the direct examination of this witness, counsel for respondent Goodyear, in direct contravention of the agreement between counsel previously referred to, requested that cross-examination of witness Edwards be deferred until after the appearance of this witness in Docket 6487 (Tr. 2083-4). Over objection, counsel's request was granted (Tr. 2084-6).

Thereafter, on the afternoon of the same day, November 26, 1957, witness Edwards testified on direct, and subsequent cross-examination by counsel for Shell Oil Company (Docket 6487, Tr. 506-655).

At the conclusion of witness Edwards' testimony in Docket 6487, counsel for respondent Goodyear requested further deferment of cross-examination in this proceeding

until the following morning, and this request was granted (Tr. 2087-8).

On the morning of November 27, 1957, witness Edwards was recalled to the stand in this proceeding and underwent an extensive and intensive cross-examination by counsel for respondent Goodyear which covered (1) his direct testimony in this proceeding on the previous day; (2) his testimony in Docket 6487 on the previous day; and (3) his testimony on April 30, 1957, before the Roosevelt Subcommittee (Tr. 2090-2214). During this cross-examination, counsel had before them the transcripts of witness Edwards' testimony on the previous day in both this proceeding and Docket 6487, and a transcript of his testimony before the Roosevelt Subcommittee.

The cross-examination of witness Edwards began at approximately 9:30 a.m. and was not concluded until after the luncheon recess that same day. Witness Edwards' appearance as a witness in this proceeding covered a period of more than six hours.

293 Counsel for respondent Goodyear had more than one month within which to conduct any investigation they desired, except contacting the witness, to prepare for the cross-examination of witness Edwards. Further, in direct violation of a prior agreement, they requested and received permission to defer the examination of witness Edwards until after his appearance in Docket 6487. Thereafter, the Hearing Examiner accorded them the widest latitude in cross-examining witness Edwards in this proceeding. Yet counsel for respondent Goodyear now contend that the appearance of witness Edwards in Docket 6487 constitutes a lack of due process because (1) they should have been afforded an opportunity to cross-examine witness Edwards in Docket 6487, and (2) the Hearing Examiner cannot possibly make a finding on the record in this proceeding without taking into consideration

the testimony of witness Edwards, as well as his credibility, in Docket 6487.

The facts with respect to witness Edwards' appearance as a witness herein refute even the slightest suggestion that respondent Goodyear's rights have been, or are being, violated. The Hearing Examiner has had every opportunity to observe the demeanor and to judge the credibility of the witness Edwards in this proceeding, without resort to any other proceeding in which he may have appeared. In fact, respondent Goodyear's motion to strike the testimony of this witness only serves to emphasize its relevance and importance with respect to the issues raised by the complaint in this proceeding.

2. Other Witnesses.

Counsel for respondent Goodyear were advised by letter dated July 12, 1957, of the fact that Messrs. Hooper, Savage, Lang and Scheiner, among others, were to be called as witnesses in Baltimore, Md. This disclosure was in accordance with the agreement between counsel relating to the exchange of the names of witnesses prior to their appearance, referred to heretofore. Because of necessary delays, the hearings in Baltimore were not held until November 18-21, 1957, so that counsel for respondent Goodyear had more than four months within which to conduct any investigation they desired, exclusive of contacting the witness, prior to such hearings. Further, all such witnesses were subjected to extensive cross-examination by counsel for respondent Goodyear.

294 Here again, the Hearing Examiner has had every opportunity to observe the demeanor and conduct of such witnesses and to judge their credibility in this proceeding, without resort to any other proceeding in which they might testify. Further, counsel for respondent Goodyear were afforded ample opportunity, which presumably

they used, to prepare for the cross-examination of these witnesses, and were given wide latitude in conducting such examination. (See Hooper, Tr. 1937 et seq., Savage, Tr. 1727 et seq., Lang, Tr. 1861 et seq., Scheiner, Tr. 1965 et seq.) It is also important to note that the testimony of witnesses Savage, Lang, and Scheiner, on their efforts to sell TBA into the Shell market, was limited by the Hearing Examiner in this proceeding to Shell service stations carrying Goodyear TBA as distinguished from Firestone TBA.

Why it would be necessary for the Hearing Examiner to consider the testimony of these witnesses, as well as that of witness Edwards, in another proceeding in order to arrive at his decision herein is never made clear in respondent Goodyear's Appeal Brief. They continually resort to such unsupported statements as "under the circumstances of this case, it is humanly impossible [for the Hearing Examiner] to avoid importing into this case impressions and conclusions formed in the other" (p. 4); "*once it is accepted* that it is impossible for a Hearing Examiner in the present situation to avoid importation of knowledge received from the one proceeding into his decision with respect to the other, it is plain that [the Administrative Procedure Act is being violated]" (p. 16, emphasis supplied); and "compartmentalization of one's mind to remove impressions and information derived from another contemporaneous case is a physical impossibility" (p. 17).

No authorities, either legal or psychological, are submitted in support of such rash assumptions. Such arguments are metaphysical and *ad hominem* in nature and are as unwarranted as they are psychologic. The subject of this psychoanalysis, the Hearing Examiner, whose mental processes are so dogmatically analyzed, does not agree with counsel for respondent Goodyear and states in his Order Denying their Motion "that there is no merit in respondents' contention." In reaching this conclusion, the Hearing

Examiner makes it clear that his initial decision in this proceeding will be based on the record herein, in accordance 295 with the provisions of the Administrative Procedure Act, without resort to Docket 6487.

In view of the foregoing, we respectfully submit that the facts do not support the contentions of counsel for respondent Goodyear that the Hearing Examiner must necessarily go beyond the record in this proceeding to arrive at his initial decision, in violation of Sections 7(c) and 7(d) of the Administrative Procedure Act.

D. The Hearing Examiner's Use of the Word "Record"
Was Proper.

As a further argument (pp. 18-20, Appeal Brief); counsel for respondent Goodyear have seized upon the Hearing Examiner's use of the word record in his order denying their motion as implying that he intends "to avoid taking into account the conduct of witnesses before him" (p. 18, Appeal Brief) and thus deprive respondent of its right to have the credibility of witnesses appraised by the Hearing Examiner.

The Hearing Examiner was paraphrasing Section 7(c) of the Act when he stated that "It would be unlawful and in violation of the Administrative Procedure Act for the Hearing Examiner to give any consideration to any matters not appearing in the *record*." Section 7(c) provides, in part, that no order shall "be issued, except upon consideration of the whole *record* . . ." The following Section 7(d) defines the "Record" as: "The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive *record* for decision in accordance with 8 . . . (Emphasis supplied.)

The Hearing Examiner correctly paraphrased Section 7(c) of the Administrative Procedure Act in his Order. This does not mean, however, that the Hearing Examiner is fore-

closed from judging the credibility of the witnesses. In fact, Section 8(b) of the Administrative Procedure Act entitled "Decisions", provides that "*All decisions (including initial . . . decision) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record . . .*"

(Emphasis supplied.)

296 As explained in the Report on the Administrative Procedure Act of the House Committee on the Judiciary, filed May 3, 1946, with respect to Section 8(b):

"Findings and conclusions must include all the relevant issues of law and fact presented by the record . . . Where oral testimony is conflicting or subject to doubt of its credibility, the credibility of witnesses would be a necessary finding if the facts are material . . ." (Senate Doc. No. 248, supra, p. 273.)

When read in proper context within the framework of the Administrative Procedure Act, it is apparent (1) that the Hearing Examiner's reference to the "record" in his Order Denying Motion was proper; and (2) that the Hearing Examiner in no manner implied therein that he intended to confine his initial decision to the so-called "day record" (p. 18, Appeal Brief). On the contrary, there is no reason to doubt that the Hearing Examiner will impartially appraise the credibility of witnesses on the basis of his observation of their demeanor and conduct in this proceeding, in full compliance with the spirit and purpose of the Administrative Procedure Act, and consistent with the authorities in point set forth at page 20 of the Appeal Brief, viz: *Gamble-Skogmo, Inc. v. Federal Trade Commission*, 211 F. 2d 106 (8th Cir. 1954), and *S. Buchsbaum & Co. v. Federal Trade Commission*, 153 F. 2d 85 (7th Cir. 1946).

E. The Same Hearing Examiner Sitting in Docket 6487 Does Not and Will Not Deprive Respondent Goodyear of Procedural Due Process.

Counsel for respondent Goodyear take exception to authorities advanced in support of the proposition that the same Hearing Examiner sitting in Docket 6487 and in this proceeding does not, and will not, result in a deprivation of due process (Point III, pp. 20-26, Appeal Brief). The cases in question are *Federal Trade Commission v. Cement Institute, et al.*, 333 U. S. 683 (1948), and *Whitaker Cable Corporation v. Federal Trade Commission*, 239 F. 2d 253 (7th Cir. 1956).

297 In the *Cement Institute* case, supra, at 702-703, the Court stated:

"Neither the *Tumey* decision [*Tumey v. Ohio*, 273 U. S. 510] nor any other decision of this Court would require us to hold that it would be a violation of procedural due process for a judge to sit in a case after he had expressed an opinion as to whether certain types of conduct were prohibited by law. In fact, judges frequently try the same case more than once and decide identical issues each time, although these issues involve questions both of law and fact. Certainly, the Federal Trade Commission cannot possibly be under stronger constitutional compulsions in this respect than a court." (Emphasis supplied.)

As stated by the Supreme Court in the *Cement Institute* case, supra, at 701, respondents "produced evidence—volumes of it. They were free to point out to the Commission by testimony, by cross-examination of witnesses, and by arguments, conditions of the trade practice under attack which they thought kept these practices within the range of legally permissible business activities."

Counsel for respondent Goodyear contend that the facts of the *Cement Institute* case, supra, were so different that the decision of the Supreme Court is inapplicable to the

instant matter. We believe these so-called distinctions to be without merit. Respondents are receiving a full and fair hearing in this proceeding, and the fact remains that even if the Hearing Examiner herein actually renders an Initial Decision in Docket 6487 prior to his determination in this proceeding, it would not be a violation of procedural due process, under the Supreme Court decision in *Cement Institute*, supra. A fortiori, where the Hearing Examiner sitting in a factually related case has not even rendered his Initial Decision in either case, as is the situation here, the *Cement Institute* decision would also be applicable.

298 In the *Whitaker Cable Corporation* case, supra, the Circuit Court of Appeals stated, at 256, 257, as follows:

"Finally, petitioner complains that the hearing examiner in this proceeding also held a hearing in a factually related matter in which petitioner did not participate. That proceeding involved eight automotive parts jobbers charged with knowingly inducing and receiving discriminatory prices by means of a group buying arrangement in violation of Section 2(f) of the Clayton Act, as amended. Petitioner was not a party to that proceeding and the issues were not the same as those involved in the instant case. Any order that might have issued in that proceeding could not have affected or prejudiced petitioner. We fail to see in what manner petitioner was prejudiced and petitioner does not indicate in what way it was prejudiced other than its assertion that such conduct by the hearing examiner violated 'concepts of basic fairness.' But see *Dolcin Corp. v. Federal Trade Commission*, App. D. C., 219 F. 2d 742, 745-46, cert. denied 348 U. S. 981; cf. *Federal Trade Commission v. Cement Institute*, 333 U. S. 683, 700-703."

Counsel for respondent Goodyear attempt to distinguish the facts in the *Whitaker Cable* case, supra, from the instant matter. However, the fact remains that the same

Hearing Examiner received evidence of sales and shipments by Whitaker to a buying group in a factually related matter (Docket 5767, *Cotton States, Inc. et al.*) arising under Section 2(f) of the Clayton Act, as amended, while at the same time the legality of respondent Whitaker's pricing system under Section 2(a) of said Act was at issue in that proceeding (Docket 5722).

As stated by Attorneys for the Commission in their Brief before the United States Court of Appeals for the Seventh Circuit in the *Whitaker* case, supra, at pages 26,

27:

299 As in the *Whitaker* case, supra, wherein the Court affirmed the Commission's Order to Cease and Desist, there is no charge of personal bias or prejudice here. On the contrary, counsel for respondent Goodyear state that they "do not wish to attack the integrity, competence or fairmindedness of the Hearing Examiner" (p. 3, Appeal Brief). The facts before the Court of Appeals in the *Whitaker* case, supra, make its ruling on this point apposite to the facts upon which respondent Goodyear bases its Appeal herein.

Counsel for respondent Goodyear also attempt to distinguish *Dolcin Corporation v. Federal Trade Commission*, 219 F. 2d 742 (D. C. Cir. 1954). The court therein held that the Commission was not disqualified from issuing an Order against respondent Dolcin because it had previously entered a similar Order in another matter (Docket 5741, *Norton Corp., et al.*) in which the same Hearing Examiner presided, and in which the same medical evidence as adduced in the Dolcin case was stipulated into the record in the Norlon case. The court stated, supra at 746:

"The occurrences here do not establish bias or disqualification on the part of the Commission; certainly nothing is shown sufficient to invalidate the hearing and the subsequent decision. Cf. *Federal Trade Com-*

mission v. Cement Institute, 333 U. S. 683, 700 (1948); *United States v. Morgan*, 313 U. S. 409, 420-421 (1941)." (Emphasis supplied.)

The decision of the Court of Appeals in the Dolcin case, *supra*, is clearly in point here. The same Hearing Examiner based his Initial Decision in the factually related Norlon matter on the same medical evidence adduced in the Dolcin case, and in fact, rendered his Initial Decision in the Norlon matter in January 1952, prior to his similar Initial Decision in the Dolcin matter the following month.

The authorities cited above plainly support the proposition that the same Hearing Examiner sitting in Docket 6487 does not, and will not, deprive respondent Goodyear of procedural due process in this proceeding.

300 For the reasons stated under this Section III, it is respectfully submitted that the Interlocutory Appeal of respondent Goodyear, if entertained, should be denied.

IV. The Request for Oral Argument Should Be Denied.

Counsel for respondent Goodyear request oral argument in support of their Interlocutory Appeal (p. 2, Appeal Brief). It is respectfully submitted that such request should not be granted under the circumstances present herein because (1) the Interlocutory Appeal raises issues which have already been ruled upon by the Commission and therefore should not be entertained (see Section II herein); (2) the respective Briefs of opposing counsel form a sufficient basis upon which to decide the merits of the Interlocutory Appeal, if entertained by the Commission; and (3) the scheduling of oral arguments would only serve to unduly delay further hearings in this proceeding.

V. Conclusion.

It is respectfully submitted that (1) the Interlocutory Appeal of respondent Goodyear should not be entertained, for reasons set forth in Section II herein; (2) if entertained, said Interlocutory Appeal should be denied, for reasons set forth in Section III herein; and (3) the request of counsel for oral argument should not be granted, for reasons set forth in Section IV herein.

Respectfully submitted,

James S. Kelaher,

Peter J. Dias,

Eugene Kaplan,

*Counsel Supporting the
Complaint.*

February 12, 1958.

406

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—6486) * *

Commissioners:

John W. Gwynne, Chairman.

Robert T. Secrest.

Sigurd Anderson.

William C. Kern.

Edward T. Tait.

ORDER DENYING INTERLOCUTORY APPEAL.

Respondents, The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc., having filed with the Commission an interlocutory appeal from the hearing examiner's order of January 2, 1958, denying their motion to withdraw from this proceeding any issue as to the Goodyear-Shell Oil Company Sales Commission Plan, and to strike all evidence heretofore received in this case

with respect to said Goodyear-Shell Oil Company Sales Commission Plan; and

It appearing that it is the respondents' contention that because of the reception of evidence by the same hearing examiner, concerning the Goodyear-Shell Oil Company Sales Commission Plan in both this proceeding and Docket No. 6487 in which the Goodyear companies are not parties, these respondents are deprived of a fair hearing; and

It further appearing that the question thus presented was considered and in effect determined adversely to the respondents in the Commission's disposition on December 5, 1956, of an interlocutory appeal theretofore filed by counsel in support of the complaint from rulings of the hearing examiner excluding from the record evidence of the type here involved; and

407 The Commission being of the opinion that the aforesaid determination of the question renders unnecessary its further consideration at this time:

It Is Ordered that the respondents' appeal and their request for oral argument in support thereof be, and they hereby are, denied.

By the Commission:

(Seal)

Robert M. Parrish,
Secretary.

Issued: March 21, 1958.

408

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—6486) * *

ORDER DENYING IN PART AND GRANTING IN PART THE MOTION OF THE GOODYEAR TIRE & RUBBER COMPANY AND THE GOODYEAR TIRE & RUBBER COMPANY, INC., TO STRIKE EVIDENCE.

This proceeding is before the hearing examiner upon motion of The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc. (hereinafter referred to as Goodyear) to strike certain evidence, and answer thereto filed by counsel supporting the complaint.

1. The specifications contained in the motion to strike may be divided into the following categories:

- A. Testimony and exhibits relating to The Firestone Tire & Rubber Company which has been received subject to motion to strike by Goodyear and also evidence contained in stipulations pertaining to The Firestone Tire & Rubber Company.
- B. Testimony and other evidence pertaining to Sherwood Brothers, Incorporated and Sinclair Refining Company.
- C. Inter-office documents of The Atlantic Refining Company.
- D. Lingenfelter testimony.
- E. Testimony relating to state of mind of a prior witness.

409 2. Testimony and Exhibits Received Subject to Motion to Strike by Goodyear. The testimony and exhibits, including stipulated facts relative to contracts and transactions between The Firestone Tire & Rubber Com-

pany and The Atlantic Refining Company, were received in evidence subject to motion to strike by respondent Goodyear in compliance with a previous order of the Commission relative to such evidence. After reviewing the record, the hearing examiner is of the opinion that no connection has been established between Goodyear and The Firestone Tire & Rubber Company contracts with The Atlantic Refining Company, and that the testimony and exhibits introduced with reference to The Firestone Tire & Rubber Company contracts with The Atlantic Refining Company should be stricken as to respondent Goodyear.

3. Testimony and Evidence re: Sherwood Brothers Incorporated and Sinclair Refining Company. While Sherwood Brothers Incorporated was a separate corporate entity, it was a wholly owned subsidiary of Sinclair Refining Company. It had a commission agreement with Goodyear from March 1, 1944, to December 31, 1955. At that time it was absorbed by the parent company, Sinclair Refining Company, and became the Sherwood Division thereof. After December 31, 1955, the Sherwood Division continued under the commission agreement previously entered into between Goodyear and Sinclair Refining Company covering accessories only. In view of the above, the testimony and other evidence relating to contracts and dealings between Goodyear and both Sherwood Brothers Incorporated and Sinclair Refining Company are competent, relevant and material as to respondent Goodyear.

4. Inter-Office Documents of The Atlantic Refining Company. With reference to exhibits which are inter-office documents of The Atlantic Refining Company, it appears from the record that the contractual relationship between Goodyear and The Atlantic Refining Company has been established by other competent evidence in this proceeding. These exhibits might not be competent to show the existence of the contractual relationship between the

two respondents, but this contractual relationship having been established, these exhibits are competent to show the steps taken to implement and carry out the contracts and also to show action taken preliminary to the entering into of the contracts. It is, accordingly, the opinion of the hearing examiner that the documents are competent, relevant and material.

410 5. The Frederick Lingenfelter Testimony. This testimony relates to the solicitation of battery business from the Atlantic distributor prior to the entering into of a TBA contract with The Firestone Tire & Rubber Company. It is the opinion of the hearing examiner that no connection has been shown as to respondent Goodyear with reference to this testimony and that it should be stricken insofar as respondent Goodyear is concerned.

6. Testimony Relating to the State of Mind of a Prior Witness. The evidence admitted over objection of respondent Goodyear pertaining to the state of mind of Atlantic dealers has been reviewed by the hearing examiner, and it appears that the objections were fully argued and considered at the time it was offered. The hearing examiner sees no reason for disturbing his rulings on evidence heretofore made during the course of the trial and while witness was on the stand.

It is Therefore Ordered that the motion of the respondent Goodyear to strike testimony, exhibits and stipulated facts pertaining to contracts and transactions between The Firestone Tire & Rubber Company and The Atlantic Refining Company be sustained and said testimony, exhibits and stipulated facts are hereby stricken as to Goodyear, but remain in the record as to The Atlantic Refining Company.

It Is Further Ordered that motion of the respondent Goodyear to strike testimony and other evidence pertain-

ing to Sherwood Brothers Incorporated and Sinclair Refining Company be, and the same is hereby, denied.

It Is Further Ordered that the motion of the respondent Goodyear to strike exhibits which are internal documents of The Atlantic Refining Company be, and the same is hereby, denied.

It Is Further Ordered that motion of the respondent Goodyear to strike the testimony of Frederick Lingenfelter, appearing in the record at pages 1087-1105, be, and the same is hereby, sustained and said testimony stricken as to the respondent Goodyear.

It Is Further Ordered that the motion of the respondent Goodyear to strike certain testimony pertaining to the state of mind of Atlantic dealers is hereby denied.

Earl J. Kolb,

/s/ Earl J. Kolb,

Hearing Examiner.

March 21, 1958.

1124

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION.
* * (Caption—6486) * *

INITIAL DECISION.

BY Earl J. Kolb, Hearing Examiner.

James S. Kelaher and Peter J. Dias, for the Commission.

Cahill, Gordon, Reindel & Ohl, New York New York, by Thomas C. Mason and Mathias F. Correa, for respondents The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc.

Ballard, Spahr, Andrews & Ingersoll, Philadelphia, Pennsylvania, by Frederic L. Ballard, Jr., for respondent The Atlantic Refining Company.

This proceeding is based upon an amended complaint brought under Section 5 of the Federal Trade Commission Act, charging as unlawful certain contracts entered into between respondents The Goodyear Tire & Rubber Company, Inc., a wholly owned subsidiary of respondent The Goodyear Tire & Rubber Company and the Atlantic Refining Company, whereby The Goodyear Tire & Rubber Company, Inc., agreed to pay The Atlantic Refining Company a sales commission on all tires, batteries and accessories sold by said The Goodyear Tire & Rubber Company, Inc., to service stations and other outlets of the Atlantic Refining Company. The amended complaint further
1125 charged that respondent The Goodyear Tire & Rubber Company, Inc., had entered into similar contracts with certain oil companies other than The Atlantic Refining Company, and that The Atlantic Refining Company

had entered into a similar contract with The Firestone Tire & Rubber Company.

This proceeding is now before the hearing examiner for final consideration upon the amended complaint, answers thereto, testimony and other evidence, proposed findings of fact and conclusions filed by all parties and briefs in support thereof, and reply briefs. The hearing examiner has given consideration to the proposed findings of fact and conclusions submitted by the parties, and their briefs in support thereof, and all findings of fact and conclusions of law proposed by the parties, respectively, not hereinafter specifically found or concluded are herewith rejected, and the hearing examiner having considered the record herein, and being now duly advised in the premises, makes the following findings of fact, conclusions drawn therefrom and order:

1. Respondent The Goodyear Tire & Rubber Company is a corporation organized, existing and doing business under the laws of the State of Ohio with its principal office and place of business located at 1144 East Market Street, Akron, Ohio. The Goodyear Tire & Rubber Company is engaged in the manufacture and in the sale and distribution of rubber products including tires and inner tubes, directly and through several wholly owned and controlled subsidiaries, including The Goodyear Tire & Rubber Company, Inc., which is primarily a marketing subsidiary.

2. Respondent The Goodyear Tire & Rubber Company, Inc., (hereinafter sometimes referred to as "Goodyear") is a wholly owned subsidiary corporation of The Goodyear Tire & Rubber Company, organized under the laws of the State of Delaware with its office and principal place of business located at 1144 East Market Street, Akron, Ohio. The Goodyear Tire & Rubber Company, Inc., is engaged in the sale and distribution in interstate commerce of tires, inner tubes, batteries, automotive parts and accessories.

which are known to the trade as TBA products and will be hereinafter so referred to.

3. Respondent the Atlantic Refining Company (hereinafter sometimes referred to as ("Atlantic")) is a corporation organized, existing and doing business under the laws of the State of Pennsylvania with its principal office and place of business located at 260 South Broad Street, Philadelphia, Pennsylvania. Said respondent is engaged in the production and in the sale and distribution in interstate commerce of petroleum products, including gasoline and lubricants sold to petroleum wholesalers (hereinafter referred to as "distributors") and to service stations.

4. Respondent Atlantic markets its petroleum products in the Middle Atlantic States (including parts of Ohio and West Virginia), New England (not including Maine) and the Southern Atlantic States. This marketing territory is divided into six marketing regions which are, in turn, subdivided into twenty-nine districts, consisting of a city or other marketing center and the surrounding territory. The marketing regions and districts are as follows:

Region

District

New England

Providence, R. I.
Springfield, Mass.
Hartford, Conn.
Boston, Mass.
New Haven, Conn.

New York

Syracuse, N. Y.
Southern Tier, N. Y.
Albany, N. Y.
Rochester, N. Y.
Watertown, N. Y.
Buffalo, N. Y.

Philadelphia-
New Jersey

Philadelphia-Suburban, Pa.
South Jersey
Newark (or North Jersey)

Region

Eastern
Pennsylvania

District

Reading, Pa.
Allentown, Pa.
Wilkes-Barre, Pa.
Harrisburg, Pa.
Williamsport, Pa.
Wilmington, Del.

Western
Pennsylvania

Pittsburgh, Pa.
Altoona, Pa.
Greensburg, Pa.
Erie, Pa.

Southern

Charlotte, N. C.
Baltimore, Md.
Richmond, Va.
Jacksonville, Fla.
Miami, Fla.

1127 5. As of April 30, 1956, there were approximately 394 salesmen calling on dealers and distributors of gasoline and lubricants, including service stations. These salesmen are divided into various classifications, dependent upon the functions which they perform as follows:

Type	Approximate Number	Function
Promotable dealer salesman	133	Sells Atlantic products and promotes recommended TBA to 'promotable dealers', which term includes lessee dealers and contract dealers interested in complete service station operation.
Dealer salesman	25	Sells Atlantic products and promotes recommended TBA to dealers not covered by promotable dealer salesmen (usually in areas of sparse distribution) or to special groups such as car dealers in other areas.

Type	Approximate Number	Function
General salesman	54	Sells Atlantic products and promotes recommended TBA to dealers not covered by promotable dealer salesmen or dealer salesmen, and also sells Atlantic products to smaller Commercial accounts.
Service salesman	147	Teaches dealers and their employees merchandising techniques and how to perform the services normally performed by first class service station operators. This teaching involves both petroleum products and TBA. For teaching purposes the salesman uses the TBA on hand at the station.
Wholesale salesman	35	Sells Atlantic products and promotes recommended TBA to distributors and wholesale dealers.

1128 6. All of respondent Atlantic's salesmen are paid on a salary basis. Promotable dealer salesmen also receive extra compensation based upon percentage gains in purchases of gasoline, motor oil and recommended TBA (and also for over-all gains) by those of their assigned dealers who have been in operation for a minimum of twelve months.

7. Respondent Atlantic sells its petroleum products to more than 5,500 retail dealers, a substantial number of whom operate service stations (as distinguished from grocery stores, garages, and other like outlets), and to more than 200 distributors who, in turn, sell said products to more than 2,800 retail outlets, a substantial number of

whom operate service stations. These retail dealers and distributors are divided into the following classifications:

Present Designation	Percentage of Total Regional Gasoline Sales By Each Customer Class	
	1951 Percent	1955 Percent
1. Company-operated Station	1	0.1
2. Lessee Dealer	32	39.1
3. Contract Dealer	23	18.1
4. Commercial Account	15	16.6
5. Wholesale Dealer	3	1.1
6. Distributor	24	24.0
7. Jobber	2	1.0
Total	100	100.0

8. The usual form of lease entered into by respondent Atlantic and its lessee dealers was for a term of one year, with automatic renewal from year to year unless written notice was given prior to the expiration of any term. Rental provided by any lease was usually a flat rental plus a cents-per-gallon charge, dependent upon location of station, financial condition of lessee and potential income.

Such lease contained provisions relating to the use, 1129 maintenance and general appearance of the station.

In the event of breach of any of the terms, conditions or covenants of the lease by the lessee, it was provided that Atlantic may, at its option, terminate the lease.

9. On April 1, 1953, respondent Atlantic adopted a long-term dealer lease policy under which any lessee dealer who has established a record of two years of satisfactory operation became eligible for a three-year lease with rental remaining the same during the entire period.

10. Tires, batteries and accessories have become a necessary and integral part of the business operation of the

Atlantic dealer. He cannot profitably and successfully operate his business without the added revenue from that portion of his business which also enables the dealer to give complete service to his customers. The service station is important to TBA manufacturers as an outlet for distributing to customers. It is to the interest of The Atlantic Refining Company to have its dealers engaged in the sale of TBA as this builds a stronger dealer organization and increases the sale of gasoline.

11. Prior to March 1951 (except as to three districts in which the Sales Commission Plan was tested beginning in 1950) respondent Atlantic purchased TBA for resale either directly or indirectly to Atlantic dealers. This purchase for resale arrangement was first begun in 1932 when respondent Atlantic began the sale and distribution of tires manufactured by the Lee Rubber & Tire Corporation. In 1937 a contract was executed with the Electric Storage Battery Company for the purchase and resale of Exide batteries in the Philadelphia region which was expanded to all marketing regions in 1945. Accessory items were added from time to time, including DuPont polishes, Thermoid fan belts, American Chain and Cable Company's weed chains and Fram oil filters. Distribution of such products to Atlantic dealers and distributors was made by respondent Atlantic either directly or through about forty-five warehouses located throughout its marketing area or through Atlantic supply dealers who distributed such products to other Atlantic dealers.

12. During the period that respondent Atlantic continued on the purchase and resale plan, Atlantic service stations were identified as sellers of such sponsored TBA products as Lee tires and Exide batteries, and to some extent of other TBA handled.

1130 13. In 1951 after a test of the Sales Commission

Plan of Goodyear and Firestone in three districts, Atlantic adopted the complete Sales Commission Plan of these companies in all six of its marketing regions. Atlantic assigned the entire marketing area by allocating the New York, New England and Philadelphia-New Jersey regions to Goodyear and the three remaining regions to Firestone.

14. The sales commission agreement entered into between The Atlantic Refining Company and The Goodyear Tire & Rubber Company, effective March 1, 1951, provided for the payment of commissions to Atlantic on the sales by Goodyear of its tires, batteries and accessories to Atlantic outlets, including service stations, distributors and consignees. The consideration of this agreement was the services to be rendered by the Atlantic sales organization in promoting the sale of Goodyear TBA products as outlined in said agreement. This agreement provided, among other things, for the payment of a commission of 10 percent on all sales of TBA to Atlantic dealer outlets, and 7½ percent on all sales of TBA to Atlantic franchise petroleum distributors. The Atlantic Refining Company also entered into a similar sales commission agreement with The Firestone Tire & Rubber Company, effective as of March 1, 1951.

15. The services which were performed by The Atlantic Refining Company pursuant to its contract with Goodyear and Firestone in promoting the sale of TBA products consisted principally of the following:

(a) Atlantic personnel, when interviewing prospective dealers for new or established service stations, advised them of the importance of TBA and recommended the TBA products of Goodyear or Firestone, and when dealers were selected would at times give advance notice of station openings or changes to Goodyear or Firestone and intro-

duce the new dealers to the sales representatives of Goodyear or Firestone, permitting such salesmen to complete any unfinished business with the outgoing dealer and enabling them to anticipate and to move promptly in handling the requirements of the new dealers.

(b) Atlantic gave assistance to dealers in arranging Goodyear or Firestone TBA supplies; took TBA orders from Atlantic dealers for either Goodyear or Firestone; and recommended the minimum Goodyear or Firestone inventory to be carried by the Atlantic dealer.

1131 (c) Atlantic frequently conducted dealer meetings at which the sale of TBA was discussed, in some instances with the active participation of Goodyear or Firestone.

(d) Atlantic operated training schools for dealers and prospective dealers which included suggestions for displaying and merchandising TBA. In the discussion of TBA, Goodyear or Firestone products were used exclusively during the training school course.

(e) Atlantic incorporated suggestions on merchandising TBA in its dealer magazines and arranged for advertising and promotions, which included TBA products of Goodyear or Firestone, and participated in promotions instituted by either Goodyear or Firestone.

(f) Atlantic also conducted tire clinics jointly with the personnel of Goodyear or Firestone which were important in familiarizing dealers in the care and repair of Goodyear or Firestone tires.

(g) Atlantic made TBA products available to credit card holders, including merchandise sold on deferred payments without carrying charge, which served to augment the sale of Goodyear or Firestone TBA.

16. The sales of Goodyear TBA and commissions paid thereon under the Atlantic-Goodyear Sales Commission

Plan were substantial as is shown by the following tabulation:

	Total Sales	Total Commissions
1951	\$ 2,445,808	\$ 239,250
1952	4,175,890	411,743
1953	5,067,565	500,437
1954	5,284,743	523,048
1955	5,700,121	557,599
1/56-6/56	3,133,905	296,988
Total	\$25,808,032	\$2,529,065

1132 17. The substantiality of the sales and commissions under the Atlantic Firestone TBA Sales Commission Plan is shown by the following tabulation for the years 1951 to 1956:

	Total Sales	Total Commissions
1951	\$ 3,243,350	\$ 299,524
1952	4,349,616	404,948
1953	5,050,381	469,784
1954	4,867,689	452,083
1955	5,562,936	506,199
1/56-6/56	2,545,798	234,317
Total	\$25,619,770	\$2,366,855

18. Under date of March 1, 1951, Atlantic sent a form letter to all Atlantic dealers entitled "A Statement of Atlantic's TBA Policy". This letter announced the adoption of the TBA Sales Commission Plan and included therein the statement that "Your acceptance or rejection of the program is a matter of your own choice". Under date of August 28, 1952, respondent Atlantic addressed a similar form letter to all its dealers entitled, "A Restatement of Atlantic's TBA Policy". Under date of June 24,

1955, a similar letter entitled "No Forcing" was sent to all Atlantic dealers, and since that time has been given to new Atlantic dealers.

19. It is the contention of counsel supporting the complaint that because of the relationship, contractual and otherwise, between Atlantic and its station operators, consignees and distributors, the adoption of the Sales Commission Plan of selling and promoting the sale of TBA entered into by Atlantic with Goodyear and Firestone has a tendency to lessen, restrain, prevent or eliminate competition in the sale of TBA, and has deprived other suppliers of TBA of a substantial portion of the TBA business of the Atlantic petroleum outlets.

20. In support of the charges of the complaint, sixteen former Atlantic dealers were called to testify in this proceeding. With the exception of three of these 1133 dealers, they testified to various forms of coercion, adopted by Atlantic salesmen in an effort to induce them to purchase sponsored TBA. Some of these witnesses testified that they had received the so-called non-forcing letter, but that they were told by Atlantic salesmen that these letters were not controlling insofar as purchases of non-sponsored TBA was concerned. The testimony of the witnesses called to support the complaint pertaining to coercion is as follows:

(a) John Chambers, an Atlantic lessee from November 1952 to November 1954, purchased the bulk of his TBA from the Goodyear supplier. Atlantic salesmen were always reminding him, that when his lease expired or was cancelled Atlantic would only accept sponsored merchandise, and that outside merchandise would not be accepted at all. This witness also testified that it was pointed out to him on a number of occasions that the acceptance or rejection of the Goodyear plan was up to the dealers.

(b) James Matthews, an Atlantic lessee from 1947 to,

1957, was told at a meeting that dealers were free to buy wherever they saw fit, but whenever salesmen called they told him differently. At the time of the change-over from Lee to Goodyear, his Lee signs were removed from his station, and he was told to get rid of Lee tires and Auto-Lite batteries and handle Goodyear. Matthews testified that he discontinued the Lee tires because he did not want his lease cancelled because of non-sponsored TBA. He was requested by Atlantic salesmen in 1953 to sign a mutual cancellation, but he promised to follow the line and went 100 percent with Goodyear. He took ten Auto-Lite batteries in trade, to which objection was made. Atlantic also objected to his handling DuPont anti-freeze. Matthews left the station in May 1957 due to bad health. He recalled receiving non-forcing letter dated March 1, 1951.

(c) Aniello L. Iacono, an Atlantic lessee from 1952 to 1954, had difficulty with Parris, the authorized TBA supplier, and began buying non-sponsored tires and batteries. He was asked by Atlantic salesman to get rid of the tires and batteries and when he refused, the salesman made an inspection of his place and claimed he was using untrained personnel, improper uniform, improper display, and maintaining a dirty station. His lease was not renewed.

(d) Isidore Jack Pollock, an Atlantic lessee from 1940 to 1953, testified that Atlantic salesmen objected to his purchase of a number of Lee tires at a special price, 1134 however, the sales supervisor stated that this would be satisfactory because of the number of years that Pollock had been with Atlantic, and he continued to purchase Lee tires thereafter. He purchased some Bowers batteries, and salesmen told him he was going to have his lease cancelled. Pollock left the station to take over a tavern.

(e) Francis J. Ballaron, an Atlantic lessee from 1953

to 1957, carried Goodyear tires and batteries purchased through Miller, an authorized distributor. He kept non-sponsored tires on oil rack where Atlantic would not see them. Ballaron testified that he left the station because of pressure every month for not buying TBA where he should.

(f) James M. Meyers, Jr., an Atlantic dealer from 1950 to 1951, testified that he discussed non-forcing letter with Atlantic salesman who told him to try buying other merchandise and find out what the letter meant.

(g) Norris Stein, was an Atlantic lessee, beginning July 26, 1954. About six months later he discontinued exclusive purchase of Firestone and was told by Atlantic salesman that he would not long be an Atlantic operator. He stated that he had received no-forcing letter of June 22, 1955. Terminated his lease for reasons not involving TBA.

(h) Thomas J. Sullivan, Jr., an Atlantic lessee from 1953 to 1954, was told that Atlantic would like him to obtain all his products from Firestone. He bought some Bowers batteries and also Exide and was told by Atlantic salesman not to sell the batteries as they were not as good as Firestone and that he didn't want them displayed in the station. He removed the batteries from display. Sullivan further testified that he returned the Exide batteries and discontinued the Bowers batteries as he felt that if he rubbed Atlantic the wrong way that he would be in their disfavor, and that his lease might not be renewed. He stated that the Atlantic representative made no direct threats, but always left the impression that if he did not operate the way Atlantic wanted him to, the chances were that his lease would not be renewed. The Atlantic salesman always questioned him when he bought non-sponsored items and gave him the impression that he was expected to buy Firestone products. The salesman would ask him from

time to time why he did not buy Firestone, and he got to the point where he bought all items from Firestone because he was afraid of no lease renewal. It was put to 1135 him that he would not be forced to buy Firestone products, but Atlantic more or less expected him to do so. Sullivan sent in cancellation of lease because of price controversy.

(i) John Galle, an Atlantic lessee from 1954 to 1956, discussed with Atlantic salesman an offer of batteries and tires at prices lower than Firestone, and salesman informed him that he had signed an agreement to purchase TBA from Firestone and should not go against this agreement, and in addition Atlantic would not like to see competitive brands to Firestone in the station. He did not purchase these items, but continued to purchase Firestone tires and batteries. He received the non-forcing letter on June 22, 1955, but did not discuss it with the Atlantic salesman.

(j) Harry N. Hawes, an Atlantic lessee beginning in 1945, had three stations. In the first station he bought only Firestone TBA. In the second station carried Lee tires, and Atlantic salesman wanted to know what they were doing there, but he continued to handle them. In the third station he sold only Lee tires and some accessories from Firestone without much comment from Atlantic. Lease was not renewed on the second station, and the third station lease was cancelled at his request. Atlantic salesman refused to let the new dealer take over the Lee tires and batteries on hand.

(k) Richard Brown, Atlantic lessee from October 1955 to April 1957, because of dissatisfaction with Firestone, began to purchase Goodrich tires. Atlantic salesman told him that he did not like the purchase of non-sponsored items, as it was affecting his salary.

(l) James Parag, an Atlantic lessee from August 1, 1955, to March 1956, became dissatisfied with Firestone

and began purchasing Goodyear tires and accessories from different sources. When Atlantic salesman saw the merchandise on his shelves he told him that he could not handle them, that if he did not handle what Atlantic handled he would lose his lease, and also because it also affected the salesman's commission.

(m) James R. Kelly, an Atlantic lessee from September 1952 to March 1953, began with Firestone TBA. Later sold whatever tires customers wanted. Atlantic salesman would not let him change window valances, he was told to leave them alone to keep the station uniform. Had some Goodyear and Goodrich tires which he kept in the back room. He felt he would get in trouble if he did not.

1136 21. Certain representatives of suppliers of TBA, who were selling in competition with respondent Goodyear, were called as witnesses in this proceeding. This testimony was taken in three areas—Philadelphia, Pennsylvania, Wilmington, Delaware, and Baltimore, Maryland. These parties testified generally that they had difficulty in selling TBA to Atlantic stations and testified specifically as to reasons given by certain Atlantic dealers for not buying or selling their TBA items. This testimony as to reasons given by Atlantic dealers for not purchasing competitive TBA was allowed under the authority of *Lawlar v. Laewe*, 235 U. S. 522. This latter testimony was received not as proof of the truth of the facts recited, but for the purpose of showing the state of mind of the dealer. This testimony, however, is competent to show that dealers did not purchase a substantial amount of competitive non-sponsored TBA because of their feeling that they were required to purchase Goodyear or Firestone.

22. In the course of its defense in this proceeding, The Atlantic Refining Company introduced the testimony of thirty-six Atlantic dealers and two ex-dealers. Substantially all of these witnesses testified to selling non-spon-

sored TBA in varying amounts without objection by Atlantic. Most of them testified to having received the non-forcing letter issued by Atlantic similar to the letter of March 1, 1951, which this record shows was delivered to all its dealers and prospective dealers.

23. The hearing examiner recognized that present dealers appearing to testify were under considerable pressure because they were naturally interested in not jeopardizing the renewal of their leases. The record as a whole shows that there were no exclusive dealers in the sense that they confined themselves entirely to sponsored TBA, as all dealers carried some non-sponsored TBA to satisfy demands of their customers either in varying amounts or on a pick-up basis. Many of the stations do not have the space or finances to stock a complete line of tires and batteries, but instead purchase non-sponsored as well as sponsored items on a pick-up basis to satisfy customer demand. There was also in some instances evidence of confusion as to the definition of accessories among the dealers, as some included as accessories items generally considered as repair parts, as distinguished from accessories, and some dealers testified to carrying non-sponsored items which were, in fact, not supplied by Firestone or Goodyear. Many of the dealers carried maintained a high sales volume in gasoline gallonage and also oil, and Atlantic would not jeopardize this gallonage by pressure tactics sufficient to irritate or alienate such dealers.

1137 24. It is clear from the record in this proceeding that the Atlantic dealers did not consider the non-forcing letter as giving to them free and unhampered authority and the blessing of Atlantic to handle whatever TBA they might see fit. Both the dealers and the Atlantic salesmen accepted this letter for what it said; namely, that the dealer at the time of the change-over and prospective dealers thereafter had the right to select or reject the TBA

sales program offered by Atlantic. The prospective dealer making application for an Atlantic station would not likely reject offhand the program submitted by Atlantic, and such rejection could very well affect his selection as an Atlantic dealer. After a dealer selected a TBA program, the Atlantic salesmen insisted, and saw to it, that the dealer hewed to the line, insofar as the more important items of TBA were concerned. The salesman would be expected to insist upon the purchase of sponsored TBA, as such purchases were reflected in the commission which the salesman received.

25. After giving consideration to the testimony of the various witnesses appearing in this proceeding, and giving consideration to their demeanor and credibility, it is the opinion of the hearing examiner that the record in this proceeding as a whole indicates that coercion and pressure were used on a substantial number of dealers to induce them to purchase sponsored TBA and to discontinue the purchase or display of non-sponsored items.

Conclusions.

1. The complaint does not charge, nor does the evidence introduced in this proceeding prove, the existence of a conspiracy between Goodyear and Atlantic to restrict and restrain competition in the sale and distribution of TBA products.

2. There is no evidence that The Goodyear Tire & Rubber Company, or The Goodyear Tire and Rubber Company, Inc., engaged in, or participated in, any of acts or practices designed to force dealers and distributors of the Atlantic Refining Company to purchase Goodyear TBA products.

3. Neither the sales commission contract between Atlantic and Goodyear nor the contracts between Atlantic

and its dealers and distributors contain any clause or provision requiring such dealers or distributors to purchase only Goodyear TBA.

4. In making a determination as to whether leases made by Atlantic with its dealers are used to suppress competition, the extent to which they are in conformity with 1938 reasonable requirements in the field of commerce in which they are used will have a direct bearing on their legality. The housekeeping provisions of the leases are not unreasonable or oppressive, and the renewal and cancellation provisions of the leases are in conformity with those which ordinarily appear in many leases of property.

5. The consideration for the payment of commission to Atlantic under the sales commission contract is based upon substantial services rendered by Atlantic in promoting the sale of Goodyear TBA to Atlantic dealers and distributors.

6. No inference or implication can be drawn from the contractual relationship between Atlantic and its dealers, that the degree of control by Atlantic over its dealers is sufficient to force its dealers to purchase only sponsored TBA.

7. The evidence in this proceeding shows that leases have, on occasion, been cancelled because of TBA practices involving the purchase or display of non-sponsored TBA products.

8. It is further concluded that for the purpose of inducing the purchase of sponsored TBA by Atlantic dealers, Atlantic representatives did, in fact, coerce, and attempt to coerce, and force Atlantic dealers to purchase substantial quantities of Goodyear and Firestone TBA, and Atlantic accepted the benefits of such acts and practices. These acts of coercion consisted of demands that dealers discontinue the purchasing and displaying of non-sponsored TBA under threat of lease cancellation, non-renewal of lease or other corrective action. Such coercion need not be 100 percent

effective in order to constitute an unfair method of competition or unfair act or practice in violation of the Federal Trade Commission Act.

9. The charges of the complaint are sufficiently broad to sustain an order prohibiting overt acts of coercion even though it be found that the contracts entered into by the parties are not illegal.

10. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein.

11. The acts and practices of The Atlantic Refining Company, as herein found, which involve coercion of its dealers are all to the prejudice of the public and have 1139 a tendency and capacity to restrict, restrain or lessen competition in the sale of TBA products and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Order.

It Is Ordered that respondent The Atlantic Refining Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the promotion, offering for sale, sale and distribution of tires, inner tubes, batteries and other automotive parts, accessories and supplies (hereinafter referred to as "TBA products"), in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Inducing, or attempting to induce, the purchase of TBA products of a particular supplier by Atlantic dealers by threatening to cancel or to not renew lease of dealer or to take other retaliatory action if said products are not purchased.

2. Threatening the cancellation or non-renewal of any contract or lease if the dealer purchases or continues to purchase TBA products not sponsored, recommended or approved by the respondent, or the sale of which is not promoted by the respondent.
- 1140 3. Threatening the cancellation or non-renewal of any contract or lease if the dealer displays or continues to display TBA products not sponsored, recommended or approved by the respondent, or the sale of which is not promoted by the respondent.
4. The performance of any acts of intimidation or coercion, either through statements, oral or written, made directly to dealers or by representatives of respondent, which are designed to, or have, the purpose or effect of intimidating or coercing respondent's dealers or other customers to purchase TBA products sold by any designated supplier sponsored, recommended or approved by respondent.
5. Compelling, or attempting to compel, dealers by any means or method to sell and distribute only products supplied by a designated supplier sponsored, recommended or approved by respondent.
6. Preventing, or attempting to prevent its dealers by means of threats, intimidation or coercion, from handing or displaying TBA or other similar products which the respondent does not sponsor, recommend or approve, or the sale of which is not promoted by the respondent.
- 1141

It Is Further Ordered that the complaint be, and it is hereby, dismissed as to respondents The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc.

/s/ Earl J. Kolb,

Hearing Examiner.

October 23, 1959.

1445 BEFORE FEDERAL TRADE COMMISSION.
* * (Caption—6486) * *

Commissioners:

Earl W. Kintner, Chairman

Robert T. Secrest

Sigurd Anderson

William C. Kern

FINAL ORDER.

Counsel supporting the complaint and respondent The Atlantic Refining Company having filed cross-appeals from the hearing examiner's initial decision in this proceeding; and

The Commission having considered said appeals, including the briefs and oral arguments of counsel and the entire record, and having rendered its opinion denying the appeal of respondent The Atlantic Refining Company and granting in part and denying in part the appeal of counsel supporting the complaint, and having determined that the initial decision should be modified in certain respects:

It Is Ordered that the findings and conclusions of the initial decision be, and they hereby are, modified and supplemented to conform with the findings, conclusions and views set forth in the accompanying opinion of the Commission:

It Is Further Ordered that the following be, and it hereby is, substituted for the order contained in said initial decision:

It Is Ordered that respondent The Atlantic Refining Company, a corporation, and its officers, agents, representatives and employees, directly or through any
1446 corporate or other device, in connection with the

promotion, or offering for sale, or sale and distribution of tires, inner tubes, batteries, and automotive accessories and supplies (hereinafter referred to as "TBA products") in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Entering into or continuing in operation or effect any contract, agreement or combination, express or implied, with The Goodyear Tire & Rubber Company, or the Goodyear Tire & Rubber Company, Inc., or with any other rubber company or tire manufacturer, or any other supplier of tires, batteries, and/or accessories, whereby The Atlantic Refining Company receives anything of value in connection with the sale of TBA products to any wholesaler or retailer of Atlantic petroleum products by any marketer or distributor of TBA products other than The Atlantic Refining Company;
2. Accepting or receiving anything of value from any manufacturer, distributor, wholesaler, or other vendor of TBA products, for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing, or promoting the sale of TBA products, directly or indirectly, by any such vendor to any wholesaler or retailer of Atlantic petroleum products;
3. Using or attempting to use any contractual or other device, such as, but not limited to, agreements, leases, training programs, promotions, dealer meetings, dealer discussions, service station identification, credit cards, and financial loans, to sponsor, recommend, urge, induce, or otherwise promote the sale of TBA products by any distributor or marketer of such products other than The Atlantic Refining Company to or through any wholesaler or retailer of Atlantic petroleum products:

4. Employing any method of inspecting, reporting, or surveillance or using or attempting to use, in any manner, its relationship with Atlantic outlets to sponsor, recommend, urge, induce, or otherwise promote the sale of any specified brand or brands of TBA products by any distributor or marketer of such products other than The Atlantic Refining Company to any wholesaler or retailer of Atlantic petroleum products;
- 1447 5. Intimidating or coercing or attempting to intimidate or coerce any wholesaler or retailer of Atlantic petroleum products to purchase any brand or brands of TBA products;
6. Preventing or attempting to prevent any wholesaler or retailer of Atlantic petroleum products from purchasing and reselling, merchandising, or displaying TBA products of his own independent choice.

It Is Further Ordered that respondents The Goodyear Tire and Rubber Company, and The Goodyear Tire and Rubber Company, Inc., (hereinafter collectively referred to as "Goodyear"), corporations, and their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the promotion, offering for sale or sale and distribution of tires, inner tubes, batteries and automotive accessories and supplies (hereinafter referred to as "TBA products") in commerce, as "commerce" as defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Entering into or continuing in operation or effect any contract, agreement or combination, express or implied, with The Atlantic Refining Company or with any other marketing oil company whereby Goodyear, directly or indirectly, pays or con-

tributes anything of value to any such marketing oil company in connection with the sale of TBA products by Goodyear or any distributor of Goodyear products to any wholesaler or retailer of petroleum products of such marketing oil company:

2. Paying, granting or allowing, or offering to pay, grant or allow, anything of value to The Atlantic Refining Company or to any other marketing oil company for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing or promoting the sale of TBA products, directly or indirectly, by Goodyear or any distributor of Goodyear products to any wholesaler or retailer of petroleum products of such marketing oil company;
- 1448 3. Reporting or participating in the reporting to The Atlantic Refining Company or any other marketing oil company concerning sales of TBA products to wholesalers or retailers of petroleum products, individually or by groups, of any such marketing oil company.

It Is Further Ordered that the initial decision as so modified and supplemented be, and it hereby is, adopted as the decision of the Commission.

It Is Further Ordered that respondents The Atlantic Refining Company, The Goodyear Tire and Rubber Company, and The Goodyear Tire and Rubber Company, Inc., corporations, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the aforesaid order to cease and desist.

By the Commission.

/s/ Robert M. Parrish,

Secretary.

Issued: March 9, 1961.

1449

BEFORE FEDERAL TRADE COMMISSION.
* * (Caption—6486) * *

Commissioners:

Earl W. Kintner, Chairman

Robert T. Secrest

Sigurd Anderson

William C. Kern

OPINION OF THE COMMISSION.

By Kintner, Chairman:

This proceeding is based upon an amended complaint charging The Goodyear Tire & Rubber Company and its wholly owned selling subsidiary, The Goodyear Tire & Rubber Company Inc., (hereinafter collectively referred to as "Goodyear"), and The Atlantic Refining Company with acts, practices and agreements constituting a violation of Section 5 of the Federal Trade Commission Act. 15 U. S. C. § 45 (1958). Respondents answered admitting in part the allegations of the complaint but denying that Section 5 had been contravened.

The principal issue framed by the pleadings is the legality of a contract between these respondents calling for the payment by Goodyear of a sales commission to Atlantic in return for sales assistance in promoting automotive tires, batteries, and accessories (hereinafter referred to as "TBA" or "TBA products") of Goodyear to retail and wholesale petroleum outlets of Atlantic. In addition, Atlantic is charged with having entered into a substantially identical agreement with The Firestone Tire and Rubber Company, and Goodyear is charged with having entered into such agreements with a number of oil companies other than Atlantic, including Shell Oil

1450 Company.¹ Although Atlantic and Goodyear are the only respondents in the instant case, Shell and Firestone are joined as respondents in a companion case. Docket 6487, and in another companion case, Docket 6485, The Texas Company and The B. F. Goodrich Company are paired as respondents.

The complaint charges, in substance, that the success enjoyed by Goodyear and Firestone in selling to Atlantic outlets has been purchased at the expense of competing TBA suppliers at the manufacturing and wholesale levels. Counsel supporting the complaint contend that the Atlantic-Goodyear and Atlantic-Firestone sales commission contracts are unlawful because, *in conjunction with Atlantic's economic power over its ostensibly independent wholesale and retail petroleum outlets*, these contracts operate to stifle the free choice of Atlantic's retail and wholesale dealers insofar as their TBA purchases are concerned. Among the unlawful competitive effects stemming from Atlantic's sales commission contracts charged by the complaint are these: (1) That suppliers of TBA competing with Goodyear and Firestone at the wholesale level have been foreclosed from access to Atlantic's retail outlets on the same competitive terms as have been made available to Goodyear and Firestone; (2) That competing manufacturers of tires and other TBA items have been foreclosed from access to Atlantic's wholesale distributors on the same competitive terms as have been made available to Goodyear and Firestone; (3) That competition between Goodyear and Firestone in selling to wholesale and retail

1. Other oil companies having sales commission arrangements with Goodyear include Anderson-Pritchard Oil Corp., Ashland Oil and Refining Co., The Carter Oil Co., D-X Sunray Oil Co., Quaker State Refining Co., Richfield Oil Co. (accessories only), The Shamrock Oil and Gas Corp., Shell Oil Co., and Sinclair Refining Co. (accessories only).

outlets of Atlantic has been destroyed; (4) That a substantial number of Atlantic's petroleum distributors and service station operators have been denied their right to act as independent businessmen in exercising freedom of choice as to TBA products which they may purchase and stock for resale; and (5) That the consuming public has been deprived of the benefits of free competition at the wholesale and retail levels insofar as TBA distribution through service station outlets under the sales commission plan is concerned.

1451 Respondents deny these allegations and assert that their sales commission contract is a legitimate and competitive method of distributing TBA which benefits suppliers of TBA products, oil companies, dealers and distributors of petroleum products and the consuming public.

After hearings extending from the latter part of 1956 into November 1958, the hearing examiner filed his initial decision on October 23, 1959, dismissing the complaint as to Goodyear but holding that Atlantic, by forcing a substantial number of its dealers to purchase sponsored TBA through threats of lease cancellation or other retaliatory action, has engaged in unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act. He further held that the charges of the complaint are sufficiently broad to sustain an order prohibiting overt acts of coercion on the part of Atlantic even though the sales commission contracts themselves are not illegal. An order was entered against Atlantic prohibiting future acts of coercion or intimidation designed to force Atlantic dealers to purchase TBA products sponsored by Atlantic.

Both sides have appealed from the initial decision. Counsel supporting the complaint contend that, while the order entered by the hearing examiner is well supported by the evidence of record, it will not be an effective means of

remedying the unlawful effects on competition caused by the sales commission plan. They seek an order restraining respondents from continuing with their present sales commission agreement and enjoining them from entering into similar agreements in the future. They also contend that Atlantic should be enjoined from purchasing TBA products from any manufacturer or other vendor of such products for resale to any wholesalers or retailers of Atlantic petroleum products, . . . or for distribution in any other manner, directly or indirectly, to any of the aforesaid wholesalers or retailers of Atlantic petroleum products."

Reply briefs were filed by Atlantic and Goodyear to the appeal brief of counsel supporting the complaint, and by counsel supporting the complaint to the appeal brief of Atlantic. Oral argument was heard by the Commission on June 23, 1960, and the matter is now before the Commission for decision. We find that Atlantic has in fact coerced 1452 a substantial number of its dealers to purchase substantial amounts of sponsored TBA through threats of lease cancellation or other retaliatory action. We further find that Atlantic has sufficient economic power over its wholesale and retail distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics. For reasons set forth hereinafter, we conclude that the exercise of this power by Atlantic through the use of the sales commission plan in favor of Goodyear constitutes an unfair method of competition and an unfair act or practice in commerce within the meaning of Section 5 of the Federal Trade Commission Act.

Characteristics of the Sales Commission Plan.

Motorists may purchase replacement TBA items from several major classes of distributors. Manufacturers of these items, for example, Goodyear and Firestone, maintain either company-owned or franchised wholesale and retail distribution outlets in all of the marketing areas for TBA products considered in the course of the hearings in this case. Gasoline service stations constitute a second major class of outlets for TBA products. According to a 1947 market survey relied upon by Goodyear in implementing its sales commission program with The Shamrock Oil and Gas Corporation of Amarillo, Texas, motorists purchase approximately 37 percent of their replacement tires and tubes, 44 percent of their replacement batteries, and 20 percent of their automotive accessories from gasoline service stations."

The complaint in this case alleges that "service stations by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They constitute a large and increasingly important market for TBA products." The truth of this allegation is conceded by both Goodyear and Atlantic, and Goodyear also admits that it "... sells TBA products directly and through wholesalers to many customers, including service stations, who purchase for resale to consumers for replacement use in their automobiles."

1453 Service station operators may purchase their requirements of TBA from two principal sources: (1) Local wholesale TBA dealers, representing Firestone, or

2. Atlantic estimated in 1948 that approximately 21 percent of all replacement passenger tires are sold by service stations. Although Atlantic's estimate is considerably lower than Goodyear's, it is nevertheless clear that service stations account for a substantial percentage of total TBA replacement items sold to motorists.

Goodyear, or some other TBA manufacturer; or (2) Oil companies chiefly engaged in refining and distributing petroleum products which also purchase TBA products from manufacturers of these items, for resale along with the refinery products such oil companies distribute through their respective marketing organizations. TBA purchased by oil companies for resale may either be branded with a particular oil company's principal brand, for example, "Gulf," or with a private brand controlled by an oil company but used exclusively for TBA and not for refinery products, for example "Atlas," or with the supplying manufacturer's own brand, for example, "Lee" (tires) or "Exide" (batteries).

No particular term is used in the industry to describe the marketing technique whereby service station operators purchase TBA from independent local wholesalers, but the term "purchase-resale" is customarily used to characterize the marketing technique whereby oil companies purchase and resell TBA to their respective service station dealers. The sales commission method of distributing TBA is a hybrid deriving certain of its attributes from the first and other attributes from the second of these marketing techniques. Both the purchase-resale plan and the sales commission plan make use of the marketing facilities of marketing oil companies, but in different ways and with differing competitive effects. This may be illustrated by contrasting the purchase-resale method of distributing TBA used by Atlantic prior to 1951 with the sales commission method adopted by Atlantic in 1951 and used by the company since that time.

Atlantic's Purchase and Resale Plan. Sometime in 1932, Atlantic commenced to purchase "Lee" tires from the Lee Rubber and Tire Corporation and to resell such tires to its wholesale and retail petroleum distributors. Later, in 1937, Atlantic commenced to purchase "Exide" batteries from

the Electric Storage Battery Company (hereinafter referred to as "Exide") and resell such batteries, along with "Lee" tires, to Atlantic dealers. Thereafter, Atlantic began to purchase and resell the following automotive accessories:

1454 Products	Supplier
DuPont polishes and chemicals	E. I. du Pont de Nemours and Company Wilmington, Delaware
Thermoid fan belts and radiator hose	Thermoid Corporation Trenton, New Jersey
Fram oil filters	Fram Corporation Providence, Rhode Island
Schrader valves	A. Schrader Sons Brooklyn, New York
Weed chains	American Chain and Cable Company York, Pennsylvania

Among the duties undertaken by Atlantic in connection with this program were the purchasing, financing, shipping, warehousing and selling of TBA items to its various classes of retail and wholesale petroleum dealers. Commenting on his company's TBA program in 1950, Mr. S. J. Heideman, TBA Manager for Atlantic, commented that "We receive a good gross margin in keeping with the duties left to us. . . ." Moreover, the overall satisfaction of Atlantic's dealers with the Lee-Exide arrangement was evidenced by the results of a TBA brand preference survey undertaken by Atlantic's Sales-Research Section in 1948 and 1949. More than 1,000 service station dealers representing seven major oil companies, including Atlantic, located in 47 cities from Massachusetts to Florida were interviewed during the course of this survey. Of the Atlantic dealers interviewed, 67 percent preferred Lee tires and 79 percent preferred Exide

batteries over competing brands of tires and batteries. Eleven percent of Atlantic's dealers stated a preference for Goodyear tires, 4 percent for Firestone tires, and the remainder announced a preference for various other tire brands. No preference for any particular brands of accessory items was found to exist, although "A definitely unsatisfactory supplier-dealer relationship" on accessories was observed. Sixty-seven percent of the Atlantic dealers contacted indicated that they would rather obtain their TBA requirements from several sources rather than a single source, the principal reasons given therefor being price advantages and the variety of brands. Of the remaining 33 percent of Atlantic dealers, who preferred 1455 a single source of supply for TBA products, less than

4 percent gave as a reason the fact that the single supplier could provide them with a complete line of TBA—better service was given as a reason by 35 percent of the Atlantic dealers preferring a single source of supply, and price was given as a reason by an additional 32 percent.

Atlantic's Changeover to the Sales Commission Plan.

Contemporaneously with the TBA brand preference survey of service station dealers described above, Atlantic management was actively considering possible alternatives to their purchase-resale arrangement with Lee. On January 19, 1948, exploratory letters were sent to five major tire manufacturers, The Goodyear Tire & Rubber Company, United States Rubber Company, The B. F. Goodrich Company, The Firestone Tire & Rubber Company, and General Tire & Rubber Company, inquiring "... what interest you may have in the sale of your tires and tubes through Atlantic outlets." The tire companies were informed of Atlantic's desire "... to consider your propositions on first line, second line, and private brand, or as many of these lines as you merchandise."

To assist the tire companies in preparing their quotations,

Atlantic estimated it would require approximately 300,000 passenger tires and 40,000 truck tires annually, with tube requirements approximating 70 percent of tire requirements. Proposals were requested not only as to principal brands of the tire companies ("Goodyear," "Firestone," etc.) but also as to secondary brands controlled by these companies ("Kelly-Springfield," "Fisk," "Federal," "Miller" and "Hood") and as to private brands as well. Mansfield Tire and Rubber Company and Lee were also contacted and requested to submit proposals on a private brand tire.

A detailed analysis of responses received from the various tire companies was presented to Mr. D. T. Colley, Vice President in Charge of Domestic Sales of Atlantic, in a memorandum of June 22, 1948, from the company's TBA Manager, Mr. Heideman. This memorandum concluded with the statement:

"This presentation and Atlantic's benefits with the several companies has been discussed at length with the members of the T. B. A. Products Committee. It was their unanimous opinion that Lee appeared to be the best choice for our company. To their approval,

I would like to add my own, since it is my opinion
1456 after careful analysis that the Lee franchise is the best available at the present time for Atlantic."

In a subsequent memorandum of August 24, 1948, Mr. Heideman set forth several reasons why a proposed experiment then under consideration involving the sale of Firestone tires in one sales district of Atlantic should not be adopted:

"It is apparent . . . that it would be unreasonable to expect too great an expansion of our present sales by the addition of a better known tire. As a matter of fact, it is our opinion that there is a very real possibility of a smaller market with Firestone due to their presently established company stores and distrib-

utors. Volume purchase requirements would leave a great number of our dealers in a poor competitive position.

"... neither Firestone batteries nor accessories have the national acceptance of the lines we presently handle. . . . [T]here is certainly an indication that consumer acceptance of the Firestone brand in batteries is very limited."

Nevertheless, negotiations with the tire companies continued throughout the remainder of 1948, and in May 1949, Goodyear expressed its willingness to offer a TBA program to Atlantic. However, it was Firestone which was selected for Atlantic's first experiment with the sales commission plan. In a letter of January 10, 1950, to the Regional Manager of its New York Region, an Atlantic official explained:

"As you know, for the past year we have been studying T.B.A. as to its profitability to the Company. Our most recent findings indicate that it is questionable whether this venture is paying us to the degree that the effort expended warrants."

"In our approaches to the subject, we have had discussions with various major tire manufacturers who, as you know, are interested in handling the entire T.B.A. line, paying us a commission."

1457 "The proposition that seems most acceptable to us is one offered by Firestone. I will not attempt to go into detail covering this proposition, but when you come to Philadelphia for the Regional Manager's Meeting next week, Mr. Heidemann (sic) plans to sit down with you and go over the proposition with the thought in mind that you will elect to have your Region be the guinea-pig."

As it turned out, however, the Firestone plan was not introduced into the New York area. Instead, operations under the Firestone commission plan began in Atlantic's

Erie, Pennsylvania, district on March 30, 1950, and in the Wilmington, Delaware, district on April 4, 1950. Operations under a sales commission plan with Goodyear commenced on an experimental basis in Atlantic's Newark, New Jersey, sales district on June 12, 1950. After these programs were instituted, Atlantic's Sales Research Section conducted a secret poll in July and August, 1950 among 600 of the 750 Atlantic dealers and distributors in the three TBA test districts. The purpose of this poll was to determine the preference of Atlantic dealers as between the Lee-Exide program and the sales commission program. Of the 123 dealers responding to the poll, 45 percent preferred the new sales commission plan, 40 percent preferred the former Lee-Exide arrangement, and 15 percent showed no preference for either plan.

In December, 1950, Atlantic contacted seven manufacturers of batteries, including Exide and Gould-National Batteries, Inc., "... in an attempt to discover whether they had at present or contemplated in the future a battery program for direct dealer merchandising similar to the commission plan offered by certain tire companies." This suggests that Atlantic was considering limiting the sales commission contracts with Firestone and Goodyear to tires and tubes only, or perhaps to tires, tubes and automotive accessories only; with a separate sales commission arrangement for batteries with a supplier who could furnish a more widely-known battery than the "Firestone" and "Goodyear" brands. (Actually Goodyear does not manufacture batteries, but instead purchases batteries marked with the "Goodyear" label from Electric Auto-Lite Company and Gould-National Batteries, Inc.)

Favorable replies were received from several of the battery manufacturers, with Exide showing particular interest in such a program. This company's manager for automotive

replacement sales responded to the Atlantic inquiry on December 22, 1950:

1458 "Currently all Exide automotive replacement battery sales to dealers are made through our Wholesale Distributors, thus affording prompt delivery through many warehouses.

"Your letter of December 15 inquires as to our plans for a commission arrangement to be offered national oil accounts on direct sales to dealers. We believe that our experience with this type of operation in past years should be of great value to you. Therefore, I suggest that immediately after the first of January you arrange for a meeting with interested members of your organization for a complete discussion of the many phases of this subject."

Negotiations between Atlantic and Exide were never consummated, however, and on February 14, 1951 a sales official of Exide reported to his superior as follows:

"Mr. S. J. Heidman (sic), T.B.A. manager of the Atlantic Refining Company called today to give me advance confidential information regarding a decision made this morning by top management of the Atlantic Refining Company regarding future handling of T.B.A. sales to Atlantic dealers.

"Effective as quickly as the changeover can be made, all T.B.A. sales to Atlantic dealers will be handled on a commission arrangement.

"... Both Firestone and Goodyear had previously been approached regarding a plan whereby they would sell tires only to the Atlantic Refining Company accounts on a commission arrangement and had flatly refused such a plan insisting that either the complete program or none be sold by them."

TBA Manager Heideman submitted a memorandum entitled "T.B.A. Conversion to Firestone & Goodyear Programs" to Vice President Colley of Atlantic on March 21,

1951, summarizing the changeover to the sales commission program:

1459 "On February 14th, the decision was made to swing over to the Commission Plan of T. B. A. marketing effective March 1st. It was arranged for three regions (Philadelphia-New Jersey, New England and New York) to market the program of the Goodyear Tire and Rubber Company, and the other three (Eastern Pennsylvania, Western Pennsylvania, and the South) were to market the program of the Firestone Tire and Rubber Company. *The split was largely a matter of regional selection, decided upon by local advantages enjoyed by the respective rubber companies but influenced by staff determinations to have the two rubber companies competing in different localities for an equal share in the development of the Atlantic dealer's T. B. A. business.* Although this move was sudden, events leading up to it were developed in an orderly fashion over a period of years.

"It will be interesting to review some of the advantages that we enjoy under the Commission Plan. We are relieved of the purchasing function We do not warehouse or deliver any merchandise; we are not involved in the handling of accounts, such as invoicing or credit and collection work; we do not issue catalogs or price books nor do we have to provide point-of-sale promotional helps. All of these responsibilities as well as sales training help are assumed by the rubber manufacturers. We assist in the selling job as well as in the dealer training and merchandising task, and for this effort receive a commission which varies according to class of account and type of merchandise, but has been averaging well over 9%.

"... We are indeed fortunate in having these two companies competing against one another for a more secure or favorable position with Atlantic. We stand to gain from this arrangement whether we are in a buyer's or seller's market.

"We have tried to estimate how our 1950 actual experience on T. B. A. would have compared with the same volume of performance if it were accomplished under the Commission Plan. Our T. B. A. volume 1460 *excluding the three test districts* amounted to seven and a half million dollars. Our gross profit ranging from 20 to 30% on the different products amounted to approximately \$1,664,000. Estimated expenses chargeable to this operation total \$2,071,000. This would indicate a loss of about \$407,000." (Emphasis added.)

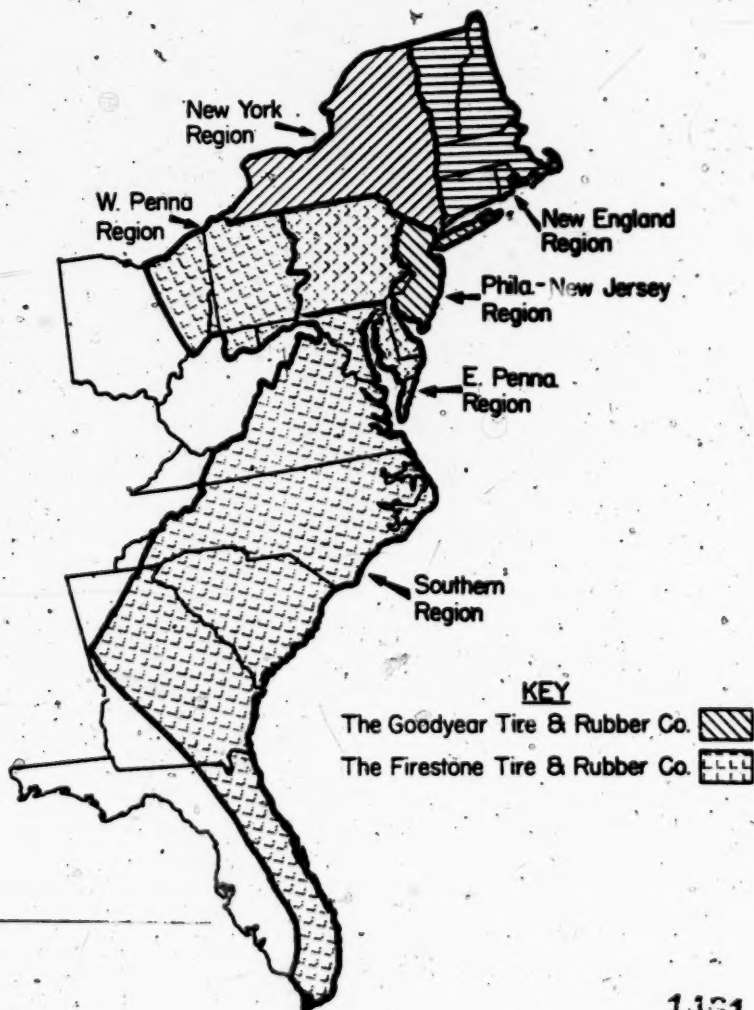
Map I, below, shows the manner in which Atlantic's marketing area was finally divided between Goodyear and Firestone. Although the three regions assigned to Firestone constitute a much greater geographical area than do the regions assigned to Goodyear, the TBA sales volume by the two rubber companies to Atlantic dealers and distributors within their respective assigned areas has generally been very nearly the same in every year since 1951, as indicated by Table I, below. This table shows that during the first 6 years of Atlantic's operation under the sales commission plan, Firestone's sales volume to Atlantic accounts totalled \$26,078,095 and exceeded the sales volume of Goodyear by only \$105,000.

3. Whether Atlantic's purchase-resale program was as unprofitable in reality as appeared from the accounting procedures used by the oil company was questioned in a memorandum from the sales manager of Exide to the vice-president of this company in February, 1951:

"The accounting procedure set up by the Atlantic Refining Company was such that expenses charged against T. B. A. sales appeared to make this operation unprofitable. As a result of this and because the top management of the Atlantic Refining Company believed that their own men should participate only in the sales of petroleum products, it was decided early in 1950 to try out the Firestone and Goodyear sales commission plan . . ."

MAP 1

THE ATLANTIC REFINING CO.
DIVISION OF MARKETING REGIONS
BY TBA SALES COMMISSION PLANS
EFFECTIVE MARCH 1, 1951



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Table I.

TBA Sales Volume by Firestone and Goodyear to Atlantic Accounts, and Commissions Paid Thereon, June, 1950 Through June, 1956.

	Goodyear Sales Volume	Firestone Sales Volume	Goodyear Commis- sions	Firestone Commis- sions
6-50/12-50	\$ 165,578	\$ 458,325 ¹	\$ 15,447	\$ 43,894 ¹
1951	2,445,808	3,243,350	239,250	299,524
1952	4,175,890	4,349,616	411,743	404,948
1953	5,067,565	5,050,381	500,437	469,784
1954	5,284,743	4,867,689	523,048	452,083
1955	5,700,121	5,562,936	557,599	506,199
1-56/6-56	3,133,905	2,545,798	296,988	234,317
Total	\$25,973,610	\$26,078,095	\$2,544,512	\$2,410,749

1. Includes period from April, 1950 through December, 1950.

Note: In 1950, the sales commission plan was used in only 3 of Atlantic's 34 sales districts. The sales commission plan was not introduced in all 34 Atlantic sales districts until March 1, 1951.

In 1952, the first full year in which the sales commission plan was operative in all Atlantic sales districts, combined sales of Goodyear and Firestone TBA to Atlantic dealers and distributors amounted to \$8,525,506, and the two rubber companies paid a total of \$816,691 in sales commissions to Atlantic. The success with which Atlantic transferred its own former TBA sales volume under the purchase-resale plan to Goodyear and Firestone under the sales commission plan may be gauged from the fact that Atlantic's TBA sales volume in 1949, the last full year of operation under the purchase-resale plan, amounted to \$6,697,471. In 1950 Atlantic continued the purchase-resale plan in all

except 3 of its 29 sales districts, and in that year the oil company's TBA sales volume was \$7,581,760.

1463 The sales gains accruing to Goodyear and Firestone as a consequence of their sales commission contracts with Atlantic were accompanied by a corresponding loss in sales by Lee and Exide even though both companies made vigorous efforts to retain the business of Atlantic dealers and distributors after Atlantic switched to the sales commission plan. Lee opened new factory branches in Hartford, Connecticut; Providence, Rhode Island; and Syracuse, New York for this specific purpose. All branches of Exide were instructed to make it "their number one job" to solicit the business of Atlantic dealers and distributors. Nevertheless, within nine months after Atlantic began sponsoring Goodyear TBA on March 1, 1951, Lee concluded that "approximately 25% of the Atlantic Refining Company business will be salvaged this year." Seven months after the changeover, Exide found that it had retained all or part of the business of 22.5 percent of the better Atlantic accounts and all or part of the business of 24.7 percent of the total number of Atlantic accounts. Thus, some 75 percent of Lee-Exide sales to Atlantic distributors and dealers were lost within a nine-month period in 1951, even though a market survey conducted by the Atlantic Sales Research Section in 1949 had shown that 67 percent of Atlantic dealers and distributors preferred Lee tires and 79 percent preferred Exide batteries.

Lee's Vice President in Charge of Sales, Mr. W. F. Hinderscheid, complained bitterly to Atlantic about the wholesale replacement of Lee advertising signs at Atlantic stations with Goodyear advertising signs shortly after the sales commission plan was undertaken on a test basis by Atlantic in 1950:

"I was under the impression, also, where dealers

wanted to continue to handle Lee Tires through us it would be allright for them to do so and we could still have our identification on those locations, however, I find that even though the dealers continue to handle our tires their stations are identified with competitive signs. For instance, in the Newark District our identification is being taken down and Goodyear will be erected even though the dealer still wants to handle Lee Tires."

TBA sales by Firestone and Goodyear to Atlantic outlets continued to grow, and by 1955, the last full year for which data are available, combined sales of the two rubber 1464 companies under their sales commission contracts with Atlantic amounted to \$11,263,057. In order fully to understand the devastating competitive effects on manufacturers and wholesalers of TBA products competing with Firestone and Goodyear which have resulted from the latter two companies' sales commission contracts with Atlantic, however, some further understanding of the functioning of the sales commission system is necessary.

Mechanics of the Sales Commission System.

Goodyear and Firestone maintain either company-owned or franchised wholesale outlets in most of the principal cities and in many smaller communities throughout the entire marketing area of Atlantic Refining Company. Atlantic markets its petroleum products in the Middle Atlantic States (including parts of Ohio and West Virginia), New England (not including Maine) and the Southern Atlantic States. As has been shown, this marketing territory is subdivided into six sales regions, three of which have been assigned to Goodyear and three to Firestone (See Map I, supra.)

In cities and towns where Atlantic retail stations are located, such stations are assigned to a local Goodyear

distributor (if in Atlantic's New England, New York or Philadelphia-New Jersey sales regions) or to a local Firestone distributor (if in Atlantic's Eastern Pennsylvania, Western Pennsylvania or Southern sales regions). The assigned TBA distributor is intended to be the supply point from which the Atlantic dealer will purchase a substantial percentage of his requirements of TBA.

The vast majority of Atlantic's retail service stations are operated by independent businessmen who either own or lease their stations. These dealers not only buy and sell Atlantic petroleum products, but also offer TBA at their stations, and in addition perform various automotive services and repairs. Atlantic maintains sales offices throughout its marketing area and employs salesmen whose duty it is to solicit orders for Atlantic petroleum products from Atlantic dealers, and to perform other functions for the oil company in its dealings with its service station operators.

When orders for petroleum products are obtained, the salesmen cause such products to be delivered to the Atlantic dealers, who pay for them at time of delivery or at other specified times. The same Atlantic salesmen also act as sales agents for Goodyear or Firestone, soliciting TBA orders from Atlantic dealers, frequently accompanied on their rounds by salesmen employed by either the local Goodyear or Firestone distributors. If TBA orders are obtained, such orders are turned in to the appropriate TBA suppliers—the local distributors of either Goodyear or Firestone—who deliver the merchandise and are paid by the Atlantic dealers. The TBA suppliers, in turn, make reports of such sales to the District Sales Offices of their respective companies, either Goodyear or Firestone.

Under the terms of the sales contracts between Goodyear and Atlantic and Firestone and Atlantic, Atlantic is

entitled to a commission amounting to 10 percent of the net sales value of all sponsored (i. e., Goodyear or Firestone) merchandise sold by Atlantic retail dealers, as consideration for the assistance given by the Atlantic sales organization in obtaining TBA orders from Atlantic dealers.⁴ These payments are made by Goodyear and Firestone directly to Atlantic each month. Atlantic incurs no expense in connection with the purchasing, financing or warehousing of the TBA so supplied and has received sales commissions from Goodyear and Firestone over the years equivalent to more than 9 percent of the net sales value of all TBA products sold by these rubber companies to Atlantic dealers and distributors.⁵

4. Atlantic has some 236 wholesale distributors, and is entitled to a commission of 7½ percent on purchases of sponsored TBA by these jobbers, compared with 10 percent on purchases by Atlantic's retail dealers.

5. Goodyear's reasons for entering into its sales commission agreement with Atlantic were set forth in a "Confidential" memorandum of February, 1951, written by Mr. S. A. Gaylord, Goodyear's Manager of Sales to oil company outlets:

"As you know we have recognized the desirability of Atlantic distribution for many years and the need for more oil company distribution in the new territory now assigned to us, which represents more than 50% of the Atlantic T.B.A. sales and potential.

"Early last year when supplies were plentiful and signs for the future pointed to over-production and increased competition, we mutually agreed on the marketing experiment with Atlantic in our respective Newark District territories with a commitment for expanded territory if the Goodyear Commission Plan proved successful—which it did.

"It is true that even at a late date we could have withdrawn from our commitment to Atlantic, however, we would have been out of the account for keeps and our competition [Firestone], which placed no restrictions on moving in, would have the account 100 percent.

1466 Tires and tubes comprise the most important of the three components of the TBA line, accounting for about 70 percent of total TBA sales to Atlantic outlets, with batteries and accessories representing about 15 percent each. Goodyear produces its own tires and tubes, and the more important categories of automotive accessories, including tire retread and repair materials, fan belts and radiator hose. Batteries marked with the "Goodyear" label are purchased for resale from Electric Auto-Lite Company and Gould-National Batteries, Inc., while the following accessories are purchased by Goodyear for resale under the original manufacturer's own brands:

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Accessory	Brand	Manufacturer
Spark Plugs	AC	AC Spark Plug Div., General Motors Corp.
Oil Filters	AC	Same as above
Oil Filters	Purolator	Purolator Products, Inc.
Cleaners, Polishes and Waxes	du Pont	E. I. du Pont de Nemours & Co., Inc.
Cleaners, Polishes	Johnson	S. C. Johnson & Son, Inc.
Cleaners, Polishes and Waxes	Simoniz	Simoniz Company
Cleaners, Polishes and Waxes	Mac's	Mac's Super Gloss, Inc.
Radiator Chemicals	du Pont	E. I. du Pont de Nemours & Co., Inc.
Radiator Chemicals	Warner	Warner-Patterson Co.
Auto Lamps and Bulbs	Westinghouse	Lamp Division, Westinghouse Electric Corp.
Wiper Blades	Anco	The Anderson Company

The sales commission method of distributing TBA products thus affects competitive relationships among

"... The decision of our Management was made after consideration of all factors and particularly because it gave Goodyear the opportunity of entering into a long-term relationship with Atlantic providing our performance is satisfactory."

producers and distributors of various products, all linked by but one common factor: the motor vehicle. As a consequence, in order to show the network of unlawful trade restraints and inhibitions permeating the sales commission system of distributing TBA, it is necessary first to describe the marketing structure of Atlantic and to define the manner in which this company exercises control over its wholesale and retail petroleum distributors, and next to describe how the sales commission plan enables Good-year to integrate such market control into its own system of distribution.

Distribution System of Atlantic Refining Company.

Atlantic is a major integrated producer, refiner, and distributor of petroleum products. The company was organized in 1860, and was acquired by Standard Oil Company in 1874. Since the dissolution of the Standard Oil

Trust in 1911, Atlantic has been operated as a separate corporate entity. In 1948, Mr. S. J. Heideman of

Atlantic stated that "Atlantic's percentage of the National gasoline market is $2\frac{1}{2}\%$. . ."; and since the oil company markets its gasoline along the Atlantic Coast states and in parts of Ohio and West Virginia only, it may be inferred that Atlantic's share of gasoline sales in its own marketing area is substantially in excess of $2\frac{1}{2}\%$ percent. Sales and operating revenue of this oil company totalled more than one-half billion dollars in 1954.

Atlantic markets its refinery products to three major classes of customers: (1) wholesale distributors; (2) retailers (chiefly service stations but including also garages, grocery stores, restaurants with outside gasoline pumps, etc.); and (3) commercial accounts. This opinion is not concerned with the last-named group, which accounted for 16.6 percent of total gasoline sales by Atlantic in 1954.

as these accounts are customers who purchase for their own consumption and not for resale.

Atlantic sold gasoline and other petroleum products directly to some 5,537 retail customers in 1956, and these direct retail dealers accounted for 57.2 percent of total gasoline sales by Atlantic in 1955. Atlantic's direct dealers are of two classes: (1) Lessee dealers, who accounted for 39.1 percent of total Atlantic gasoline sales in 1955; and (2) Contract dealers, who accounted for 18.1 percent of gasoline sales by Atlantic in the same year. Shown below in Table II are the numbers of lessee and contract dealers purchasing petroleum products directly from Atlantic in each of its marketing regions in June, 1956:

Table II.

Numbers of Direct Lessee and Contract Dealers of Atlantic Refining Company in June 1956, by Marketing Regions.

Region	Lessee Dealers	Contract Dealers
New England	495	220
New York	321	263
Philadelphia-New Jersey	481	640
1469 Eastern Pennsylvania	480	1075
Western Pennsylvania	317	725
Southern	399	121
Grand Total	2493	3044

Lessee Dealers. The principal characteristic distinguishing lessee dealers from contract dealers is that the former do not own their own business properties, but instead lease them from Atlantic. Lease terms range from three months to three years; most lessee-dealers operate under one-year leases, however. The leasehold instrument does not require the lessee to handle Atlantic products, but does pro-

vide that the premises shall be used for the operation of a "first-class automotive service station retailing petroleum products and TBA merchandise normally handled at competitive service station outlets." Rental payments by lessees are based on specified percentages of gross monthly sales of all types of merchandise, including TBA. These percentages are as follows:

0 percent.....	First	\$500 monthly
6 percent.....	Next	\$2000 monthly
5 percent.....	Next	\$2000 monthly
4 percent.....	Next	\$2000 monthly
3 percent.....	Over	\$6500 monthly

At the time he executes his lease with Atlantic, each lessee-dealer is required to sign a separate document known as an "Eleven Point Lease Letter". This letter defines standards of operation for Atlantic lessee-dealers. Illustrative of these is the standard for "Housekeeping":

- "1. Housekeeping—Clean, sanitary premises, inside and out."

Other standards set forth in the "Eleven Point Lease Letter" are "Use and Upkeep", "Display", "Illumination", "Personnel", "Hours of Operation" ("Uniform daily operating schedule based on buying habits of potential trade in the area"), "Services", "Adequate Inventory", "Sales Promotion", "Prices", and "Accounting". These standards of operation are implemented

by Atlantic not only through the surveillance of its sales force, but also by the employment of "Phantom Customer Inspectors".⁶

6. Witness John Chambers, former Atlantic lessee-dealer who testified in support of the complaint in this proceeding, received the following letter from his former Atlantic District Sales Manager on October 14, 1954:

Since its adoption on April 1, 1953, the "Eleven Point Lease Letter" has been used by Atlantic to interpret and enforce Paragraph Three of dealer leases which, as noted, provides that "... the sole purpose and use of the leased premises shall be the lawful, diligent and businesslike operation of a first-class automotive service station . . ."; thus the "Lease Letter" is an integral part of the lease itself. This is shown by the regularity with which Atlantic warns lessee-dealers in writing that their leases will be terminated if stated defaults with respect to the provisions of the "Eleven Point Lease Letter" are not remedied within fifteen days.⁷

1471 Prior to about August 1953, Atlantic's written agreements with its lessee-dealers also included an "Atlantic Franchise Agreement", providing for their purchase of motor fuels and automotive lubricants from their oil ^{company} lessor under stated terms and conditions. In recent years, only automotive lubricants have been covered by

"Dear John:

"Our Phantom Customer Inspector has just reported to us that you received a 290 out of a possible 300 on a recent inspection.

"This is the kind of job which makes us all very happy and certainly is an important factor in running a profitable service station."

Witness Chambers' lease was subsequently terminated because he refused to go along with Atlantic's pricing policy and because he did not purchase sufficient quantities of sponsored TBA.

7. Here, for example, is a letter dated December 8, 1953 to dealer Michael J. Clifford, Baltimore, Maryland:

"1. From observations, we note that your regular hours of operation are such that we believe your market area is not being properly supplied.

"2. We also note from observations that inventories maintained in your station are not adequate to serve normal customer needs without delay."

(This dealer's lease was terminated January 4, 1954, for noncompliance with the above defaults.)

written purchase agreements between Atlantic and its lessees. Nevertheless, the facts of record clearly establish that Atlantic lessees purchase and resell Atlantic motor fuels exclusively.

Notwithstanding the economic power possessed by an oil company as a consequence of being both landlord and supplier to its lessee-dealer customers, the powers and responsibilities of an oil company's lessee-dealer "satisf[y] all the requirements of an independent enterprise." *United States v. Richfield Oil Corp.*, 99 F. Supp. 280, 288 (1951) aff'd, 337 U. S. 922 (1952). Judge Yankwich's comments in the Richfield case as to the relationship of an oil company to its lessee-dealers apply with equal force to the instant case:

"Implicit in the contract is the lessee's assumption of obligation and responsibility for his own acts upon the premises and those of his employees in their relation to the public, who come in contact with them during the time of his dominion. The lessee is not the employee of Richfield. Richfield pays him no wages or other remuneration. He must carry his own workmen's compensation. He is not carried on their books as an employee for the purpose of social security taxes or any of the withholding taxes, state or federal, incidental to the employer-employee relationship. Richfield is not required to withhold any moneys from him for income tax purposes. Neither are they required to perform any of the duties just mentioned as to any of the employees who may assist the lessees in the conduct of the station or of any auxiliary repair work upon the premises. The lessee is solely responsible for his own conduct and that of his employees which may cause damage to the persons or property of others." [99 F. Supp. at 288.]

Contract Dealers. There were 3,044 contract dealers of Atlantic as of June 1956, and of this number about 50 percent operated service stations (as distinguished from

grocery stores, garages, and similar outlets with gasoline pumps on the premises). Non-service station outlets 1472 generally do not purchase and resell TBA products; all service station outlets, however, are regarded as potential purchasers of TBA under Atlantic's agreements with Goodyear and Firestone.

Although contract dealers either own their own service station properties, or lease them from parties other than Atlantic, these dealers are subject to the control of Atlantic as a consequence of various contractual agreements between such dealers and Atlantic. Chief among these is an agreement having the following principal provisions:

"1. Equipment Loan. Atlantic, reserving the right of addition, change, substitution, and maintenance, lends to Buyer [the contract dealer] for the purpose of storage and sale of motor fuel purchased solely from Atlantic and for no other purpose, equipment that has been installed or which Atlantic may install, which shall remain personalty and the property of Atlantic, and which Buyer shall not remove, but shall repair and maintain as follows." [Lists equipment?]

"2. Sale and Delivery. Provides that the contract dealer shall buy a specified number of gallons of motor fuel annually from Atlantic; that deliveries will not exceed one-eighth of such gallonage monthly; that the contract dealer 'shall order and accept not less than one-twentieth of such annual gallonage in any calendar month'; and that the times, manner and quantities of delivery shall be in accordance with Atlantic's current practice."

The agreement further provides that all petroleum products delivered thereunder shall be paid for at prices established by Atlantic. The term of such agreement is generally for one year, and may be terminated by either party at the end of the original or any subsequent term by giving 60 days notice. Upon termination, Atlantic is entitled to repossess any equipment loaned to the dealer, with or

without legal process. If the agreement is cancelled by Atlantic because of breach by the dealer, the dealer must pay a fixed sum to Atlantic as reimbursement for cost of installation and removal of the equipment or, at its option, Atlantic may leave the equipment in place and require the dealer to pay a fixed sum for the value of the equipment and improvements. The equipment most frequently loaned (without charge) by Atlantic to contract dealers includes gasoline pumps, underground storage tanks, compressors, air towers, lifts, signs, outside lighting and poster frames.

1473 Both lessee-dealers and contract dealers have agreements with Atlantic relating to annual purchases of specified quantities of automotive lubricants, and to the terms upon which credit may be extended by these dealers to the approximately 160,000 holders of Atlantic credit cards.

Wholesale Distributors. This class of customers purchases refinery products from Atlantic for resale under the oil company's brand names. Wholesale distributors maintain bulk storage tanks capable of receiving truck deliveries of gasoline from Atlantic, and maintain their own delivery equipment for transporting such gasoline from their bulk storage tanks to retail customers, including service stations. There were 236 wholesale distributors of Atlantic products in 1956, who resold to 2,897 service stations, as shown by Table III:

Table III.

Numbers of Wholesale Distributors of Atlantic Refining Company, and Service Stations Supplied By Them
In June 1956, By Marketing Regions.

Region	Distributors	Service Stations
New England	8	151
New York	39	238
Philadelphia-New Jersey	0	0
Eastern Pennsylvania	77	925
Western Pennsylvania	26	410
Southern	77	1,173
Grand Total	236	2,897

Atlantic had wholesale distributors in each of its six principal marketing regions in 1956, with the exception of the Philadelphia-New Jersey region. (There were 1,121 Atlantic service station outlets in the Philadelphia-New Jersey region in 1956, but all were supplied directly by the oil company.) These distributors accounted for 24 percent of total gasoline sales by Atlantic in each of the years 1951 and 1954. Eighty-seven percent of the 1474 2,897 service stations supplied by wholesale distributors of Atlantic in 1956 were in the Eastern Pennsylvania, Western Pennsylvania, and Southern regions; the remaining 13 percent were in the New England and New York regions.

Wholesale distributors are parties to the same type of sales contracts for automotive fuels and lubricants with Atlantic as are Atlantic's contract service station dealers. Moreover, Atlantic has the power to change the source of supply for service station dealers from Atlantic itself to wholesale distributors. During the period from April 1950 to June 30, 1956, Atlantic reassigned 53 contract service

station dealers in the Wilmington, Delaware and Baltimore, Maryland sales districts from itself to particular wholesale distributors in those districts. Atlantic's use of the power to expand a wholesale distributor's retail market by adding to the number of service stations supplied by such distributor in order to induce such distributor to purchase and resell sponsored TBA to his service station customers was described by witness Lingenfelser, a salesman for Reading Batteries, Inc. (now the Reading Battery Division of the Electric Auto-Lite Company), who testified in support of the complaint.

The Issue of Coercion.

The complaint in this case charges that Atlantic has caused its various classes of dealers to purchase substantial quantities of Goodyear or Firestone TBA through the use of threats to terminate either their tenure as lessees (if lessee-dealers) or their petroleum supply and equipment loan contracts (if contract dealers). It is conceded by counsel supporting the complaint that when Atlantic adopted the sales commission system on March 1, 1951, all its dealers were informed by letter entitled "A Statement of Atlantic's TBA Policy" as follows:

"Our sales organization has been instructed to explain and demonstrate to you the many advantages of the new TBA plan. They will do so with enthusiasm and conviction because they are confident that it will be advantageous for you to accept it. *However, your acceptance or rejection of the program is a matter of your own choice.*" (Emphasis added.)

Notwithstanding this initial statement of policy by Atlantic, repeated periodically thereafter in form letters sent to its dealers, counsel supporting the complaint contend that in practice this officially-proclaimed policy has been 1475 ignored by Atlantic and that in fact, Atlantic dealers

have been orally advised by sales officials of the oil company that their continued status as Atlantic dealers and lessees will be in jeopardy if they do not purchase sufficient quantities of sponsored TBA. This contention is supported by the testimony of former Atlantic dealers who appeared as witnesses and further reinforced by the testimony of witnesses representing many suppliers of TBA engaged in competition with Firestone and Goodyear, who testified that they encountered difficulty in selling TBA to Atlantic dealers because the latter group felt that they were required to purchase sponsored TBA and feared reprisal by Atlantic if they purchased non-sponsored items. Testimony of the competing TBA suppliers as to reasons given by Atlantic dealers for not purchasing competitive TBA was allowed under the authority of *Lawlor v. Loewe*, 235 U. S. 522 (1915). This testimony was received not as proof of the facts recited, but for the purpose of showing the state of mind of the Atlantic dealers. Such testimony is competent to show that Atlantic dealers did not purchase a substantial amount of competitive non-sponsored TBA because of their feeling that they were required to purchase Goodyear or Firestone TBA.

Among the former Atlantic dealers who testified in support of the complaint, several recounted specific instances in which either express or implied threats of lease cancellation were made. Other ex-Atlantic dealers testified to incidents occurring during their tenure as Atlantic lessees which made it apparent to them that they were expected to handle either Goodyear or Firestone TBA, and that if they failed to purchase sufficient quantities of such TBA, that their relationship with Shell might be terminated.

Typical of the former Atlantic dealers testifying in support of the complaint was witness John Chambers, who operated an Atlantic station in the Philadelphia area from

1945 until November 28, 1954. He gave this account of the events occurring when Atlantic changed over from the Lee-Exide program to the sales commission plan in 1951:

Q. Mr. Chambers, referring . . . to the dealer meeting when the switch-over to the Goodyear TBA line was announced, were you given any choice as to the brand of TBA that would be carried by Atlantic?

A. No, there was no choice; I mean the company said that they were going from one product which would be Lee and Exide, over to full Goodyear.

1476 Thereafter, witness Chambers commenced purchasing Goodyear TBA from the local Goodyear distributor to whom he had been assigned, a Mr. Parris. From time to time, however, he also purchased TBA products from other suppliers in his area. Among these were the following:

Chester Auto Parts	Waxes and other accessories
Chester, Pennsylvania	
V. J. Auto Parts	Accessories, including
Sharon Hill, Pennsylvania	"Barsleak", a radiator sealer
C. A. Powers	
Chester, Pennsylvania	Recapped tires, and
(A Goodyear tire distributor)	also some new Goodyear tires and tubes

Witness Chambers testified that he was criticized by Atlantic salesmen for purchasing accessories from wholesalers other than Mr. Parris, his assigned supplier:

Q. Were any comments ever made by Atlantic representatives concerning your purchases of accessories from other than Ed Parris?

A. Yes.

Q. Would you please state some instances?

A. . . . the one that is greatest in my memory right now was the Barsleak, . . . Joe Connelly was Atlantic [salesman] at the time, and Joe would pick it up and

say, "What are you doing with this," and he would set it back down.

Q. Were any comments other than the one referred to made by Atlantic representatives concerning the purchases of TBA from local jobbers other than Ed Parris?

A. Why yes, there was great criticism, shall I say, in reference to outside [i. e., non-sponsored] merchandise.

Q. Who made these criticisms?

1477 The Witness: Why salesmen who represented the company.

Q. Which company?

A. Atlantic.

Q. Where did these conversations take place between the Atlantic salesmen and you?

A. Many times over a cup of coffee and sometimes out in the driveway.

Q. Would it generally be a private conversation?

A. If it was to be of that private nature, yes.

Q. Well, when it was a criticism, was it generally of a private nature?

A. It was never done openly.

Subsequently, in November 1954, witness Chambers was notified that his lease would not be extended beyond December 31, 1954. He discussed this with Mr. Parris, his TBA supplier, who was also a former employer of witness Chambers:

Q. ... what was the substance of your conversation with Mr. Parris?

A. I asked, "what in the world happened, what could I do." He said, "Jack, you have been turned in

by three [Atlantic] . . . salesmen for buying outside merchandise." I said "Who?" He said, "Connelly, Muldoon, and Petrison" turned me in for buying outside merchandise."

1478 The above testimony must be assessed in the light of that given by Mr. Glenn L. Wetzel, President of Chester Auto Parts, Inc., of Chester Pennsylvania. His company sells automotive parts, batteries and accessories (but no tires) at wholesale. Witness Wetzel gave this account of his conversation with witness Chambers:

Q. Do you recall other conversations with other Atlantic dealers or Sinclair dealers, along similar lines?

A. Yes. John Chambers.

Q. Please state the time as nearly as you can, the place, and what was stated.

A. I would approximate the time as about 1953, possibly 1954. I wouldn't know exactly any more. But it was to the effect that he had to stop buying from me. He was told that he was buying too much on the outside from outside distributors, meaning V. J. Auto Parts and myself, which were specifically named.

Q. Now will you please state what the conversation was?

A. Jack said to me: "Glen, I am going to have to stop buying from you. I have been warned that if I don't, I am going to be removed from this station. They are going to give me the ax." And two months later he got the ax.

Further testimony as to the state of mind of witness Chambers in 1953 and 1954 was given by witness Joseph

8. Atlantic regarded witness Chambers as an excellent service station operator, as is shown by the letter to him of October 14, 1954, quoted *supra*, note 6. This letter of commendation was received by witness Chambers just one month before he received notification that his lease would be terminated.

Marabella, a partner in the firm of V. J. Auto Parts Company, Folcroft, Pennsylvania. Mr. Marabella testified as follows:

Q. And did you solicit Bars Leak (sic) business from Mr. Chambers when he was an Atlantic lessee-dealer?

A. Yes sir.

1479 Q. And what was your experience with respect to sale of Bars Leak to Mr. Chambers?

A. My, well, business relations and experience with Mr. Chambers had been the same as with other gentlemen I have mentioned, enjoying good business relations, good sales on Bars Leak, up until the time he was told to remove it from his ~~shelf~~, . . . shelf

Later, witness Marabella tried to sell Mansfield tires and tubes to witness Chambers and to another Atlantic dealer named Booz:

A. Well, in the latter part of 1954 with Mr. Booz, Elmer Booz, Wycombe Avenue and McDade Boulevard in Darby, I along with a Mansfield tire representative went in to solicit some of Mr. Booz' tire business. He said, "Joe, I'd be glad to buy them on a fill-in basis, but you know I cannot put anything in here but Goodyear tires and Goodyear tubes." And that was the extent of the conversation.

Q. Do you recall any other conversations with Atlantic dealers along similar lines?

A. Jack Chambers, we solicited him the same day at his station which was Clifton Avenue and Chester Pike in Sharon Hill, in his office, told us he was sorry to waste our time but more or less the same answer, that he couldn't put anything but Goodyear in there.

Documentary evidence taken from the files of Atlantic reveals the vigor with which Atlantic carried out its campaign to replace Lee tires and Exide batteries with Good-

year and Firestone TBA products. The minutes of a meeting of Atlantic's Regional TBA coordinators held on 1480 October 21, 1951, reveal that as of that date, "New

England reported that approximately 98% of their accounts have been signed on a Goodyear program and that they are getting about 75% of the tire business they formerly enjoyed from these accounts. New York reported that they had about 96% of their accounts signed on a Goodyear program and that they were getting about 65% of their former tire business . . . " By December 24, 1951, an Atlantic report showed that virtually all Atlantic dealers in Goodyear's assigned territory who were potential purchasers of TBA had signed contracts agreeing to handle Goodyear products.

Accompanying the campaign to sign Atlantic dealers to Goodyear contracts was a drive to install Goodyear signs and advertising materials in Atlantic stations throughout Goodyear's assigned marketing areas. This is an excerpt from a letter of July 30, 1951, from Atlantic's TBA sales manager, Mr. Heideman, to another Atlantic official:

"I asked Mr. O'Neill of the Goodyear Tire & Rubber Company to supply me with a list of the Atlantic dealers in the Philadelphia Region who refused to be identified on the Goodyear Program. Attached is a list of 46 dealers who, for reasons indicated, have refused this service.

"You will probably wish to review the respective portions of this list with the District Managers concerned. Undoubtedly, facilities for identification are not the best at some of these locations, but with the others it is apparent that the proprietors have not been sold on the Goodyear program. In such instances, I believe that additional sales effort is called for. In any event, would you be kind enough to advise me at your convenience what action you have taken with regard to this list."

Mr. Heideman followed this letter up himself on August 21, 1951, with a letter to Mr. S. A. Gaylord, Manager, Petroleum Sales Department, of Goodyear:

"I wonder if you can furnish me promptly with a report on the progress of the subject program. I should like to have this information broken down by our regional territories. As I understand it, the signs are
1481 being erected by Goodyear crews, but the decals are being erected by outside agencies. Furthermore, at the present time when we locate an Atlantic dealer who is without any Goodyear identification or without one or the other signs or decals, we do not know whether an unsuccessful attempt has been made to complete the assignment or whether all or part of the job, whatever the case may be, is scheduled for attention.

"We should like to interest ourselves in the cases where an unsuccessful attempt has been made to provide the Goodyear identification. Perhaps this information could be made available to us in simplest form by stating the Atlantic District areas that have been covered by either sign crews or agencies that are applying the decals, and by supplying us a list of the dealers where attempts to erect decals or signs were unsuccessful.

"I have already received a list of this type for the Philadelphia and South Jersey areas, and this has been referred to our District Managers for further attention. However, I do not know if this is a partial or complete list of the dealers in that territory who could not be identified with Goodyear signs."

Atlantic's "sales efforts" met with complete success, for the entire group of 46 recalcitrant dealers referred to in Mr. Heideman's letter of July 30 was thereafter signed to Goodyear contracts and Goodyear advertising signs were installed at their stations. The letter of complaint from Lee Rubber and Tire Corporation to Atlantic over the question of removal of Lee advertising signs from Atlantic stations has already been referred to, *supra* at page 15.

And on March 5, 1951, Mr. E. W. McCreery, another Lee vice president, stated in an intra-company memorandum referring to the Atlantic sales regions assigned to Firestone:

"In analyzing salesmen's reports on their calls on Atlantic accounts and with other information that we have, we are doubtful that many of the #2 type stations will stay on Lee tires. Because these stations are leased from Atlantic, some on a month-to-month basis, others on 90 days or longer basis, they are not in a position to take an independent stand and as a result will probably find it expedient to handle Firestone tires."

1482 In our opinion, the documentary evidence in this record—only a fraction of which is referred to above—and the testimony of the various representatives of suppliers of TBA competing with Goodyear and Firestone previously adverted to lend credence to the testimony of the ex-Atlantic dealers who gave evidence in support of the complaint in this proceeding. We affirm the hearing examiner's finding that agents of Atlantic have in fact coerced a substantial number of Atlantic dealers to purchase substantial quantities of Goodyear and Firestone TBA, and that Atlantic has accepted the benefits of such coercion in the form of sales commissions.

Respondent Atlantic cites *United States v. J. I. Case Co.*, 101 F. Supp. 856 (D. C. Minn. 1951) as authority for the proposition that the hearing examiner erred in concluding that Atlantic has coerced a substantial number of its dealers in violation of Section 5 of the Federal Trade Commission Act. This District Court opinion is commonly regarded as a notable exception to the trend of decisions dealing with the subject of exclusive dealing.⁹ But we need not dwell on the *Case* decision, since the subject of

9: Robinson, *Providing for Orderly Marketing of Goods*, 15 A. B. A. Antitrust Sec. 282, 308 (1959).

coercive practices has received careful scrutiny from the Seventh Circuit and from the Supreme Court in a line of cases in the field of automotive financing. In *United States v. General Motors Corp.*, 121 F. 2d 376 (7th Cir. 1941), General Motors and its affiliates, General Motors Sales Corporation, General Motors Acceptance Corporation, and General Motors Acceptance Corporation of Indiana, Inc., appealed from a conviction of criminal conspiracy in violation of the Sherman Act. The indictment charged that these defendants had conspired to coerce franchised dealers of General Motors Corporation to finance their purchases and sales of automobiles through General Motors Acceptance Corporation. In affirming the criminal convictions, the court stated:

"The record leaves no doubt that the dealer body as a whole was made acutely aware and had knowledge of the set policy of the appellants with respect to the use of GMAC financing facilities. The fear of cancellation or refusal to renew contracts was great, so much so that the dealer was reluctant to refuse the terms and policies dictated by the appellants."

1483 Approving the trial judge's instructions to the jury in the *General Motors* case, the Supreme Court stated in *Ford Motor Co. v. United States*, 335 U. S. 303 at 316-317 (1948):

"... Their plain effect is to draw a line between such practices as cancellation of a dealer's contract, or refusal to renew it, or discrimination in the shipment of automobiles, as a means of influencing dealers to use GMAC, all of which falls within the common understanding of 'coercion,' and other practices for which 'persuasion,' 'exposition' or 'argument' are fair characterizations."

We are of the opinion that the record contains ample evidence to support the hearing examiner's finding that Atlantic has coerced and forced a substantial number of

its dealers to purchase sponsored TBA. However, we regard these overt acts of coercion as mere symptoms of a more fundamental restraint of trade inherent in the sales commission system itself. The more dramatic and immediate impact of this system, to be sure, is upon retail service station dealers of Atlantic and other oil company dealers similarly situated. Their freedom to buy and sell as independent merchants is shown to be less complete in practice than in theory. Yet from the point of view of the antitrust laws, it is the competitive effects of the sales commission system on competitors of Goodyear and Firestone which raise the most grave questions in this proceeding.

We turn, therefore, from an examination of the restrictive effects of the sales commission system upon service stations as buyers of TBA to an assessment of this system's impact upon wholesale and retail distributors 1484 of TBA engaged in competition with wholesale and retail distributors of Goodyear and Firestone. Preliminary to this inquiry, however, it will be helpful to have a more detailed understanding of the manner in which the sales commission plan enables Goodyear to integrate into its own nationwide distribution system the economic power possessed by Atlantic over its wholesale and retail petroleum outlets.

The Sales Commission Plan in Goodyear's System of Distribution.

Goodyear is the largest manufacturer of rubber products in the United States, with net sales of more than one billion dollars in 1954. The company has tire and tube factories located respectively in the states of Ohio, Alabama, Michigan, California and Kansas. There are 57 Goodyear warehouses across the land, and Goodyear tires, tubes and accessories are distributed to wholesale and retail distribu-

tors through these warehouses. Batteries, because of the weight factor, are not warehoused by Goodyear except for emergency needs; all Goodyear wholesalers order "Goodyear" batteries directly from the factories of the two companies which produce "Goodyear" batteries under contract: Electric Auto-Lite Company and Gould-National Batteries, Inc.

Goodyear has approximately 500 company-owned and operated retail stores throughout the United States, and these stores also sell at wholesale. Apart from such company stores, there are more than 12,000 independent franchised stores selling Goodyear products at wholesale and retail and an unknown but very substantial number of firms not franchised by Goodyear but which purchase and resell Goodyear merchandise in the same manner as franchised Goodyear dealers. Franchised dealers are sometimes referred to as "direct" accounts, and non-franchised dealers in Goodyear merchandise are sometimes referred to as "indirect" or "associate" accounts.

All direct Goodyear accounts, which include independent franchised Goodyear dealers, wholesale petroleum distributors of Atlantic, and some retail petroleum dealers of Atlantic, execute a franchise agreement with the Goodyear Company itself, and purchase Goodyear products from the nearest Goodyear District Sales Office. Indirect, or associate Goodyear dealers do not have contracts with the Goodyear Company and do not purchase Goodyear TBA from the Goodyear District Sales Office. Instead, they usually execute a "Goodyear Associate Dealer Agreement" with the particular Goodyear wholesaler to which they are assigned. Such wholesaler may be either a 1485 company-owned store, a franchised independent dealer of Goodyear, an Atlantic wholesale petroleum distributor, or an Atlantic retail petroleum dealer. Indirect, or associate, dealers normally purchase from the whole-

salers to which they have been assigned, and normally pay higher prices for merchandise than do direct dealers of Goodyear.

Most service station customers, including Atlantic stations, are classified as indirect or associate dealers by Goodyear, although, as noted, some Atlantic stations are direct dealers of Goodyear and function as supply points to other Atlantic stations which are merely associate dealers. (The term "supply point" is used by respondents to refer to the local TBA supplier to which local Atlantic stations have been assigned.) A number of Atlantic wholesale distributors of petroleum products also function as supply points for Goodyear, and distribute TBA to the same retail stations which the wholesale distributors supply with Atlantic petroleum products. A supply point, then, is a local wholesaler of Goodyear TBA, although it may also be a retail dealer of Goodyear, a retail dealer of Atlantic, or a wholesale distributor of Atlantic as well. In the three marketing regions of Atlantic assigned to Firestone, the same classification of Atlantic dealers into direct and indirect accounts of Firestone is found as is described above with respect to Goodyear, and in all other material respects the sales commission plan between Atlantic and Firestone functions in substantially the same manner as does the sales commission plan between Atlantic and Goodyear described herein.

An integral part of the Goodyear-Atlantic and Firestone-Atlantic sales commission plans is the assignment or allocation of each Atlantic retail outlet to a specific supply point designated by Goodyear or Firestone. When a new Atlantic station is opened, or when a new dealer replaces a retiring operator, Atlantic reports to Goodyear (or to Firestone, as the case may be) the name and address of the new Atlantic dealer on an appropriate Goodyear (or Firestone) form. The Goodyear (or Firestone) District

Manager then assigns this outlet to a specific supply point and notifies the supply point and the Atlantic outlet of the assignment which has been made. No sales commission is paid to Atlantic unless the Atlantic outlet purchases from the designated supply point to which it has been assigned. In other words, even though an Atlantic dealer purchases

Firestone or Goodyear TBA exclusively, unless he 1486 buys from his assigned supply point, Atlantic receives no sales commission. One reason why Goodyear does not pay a sales commission when TBA merchandise is purchased by an oil company dealer from someone other than his assigned supply point was set forth in a letter dated December 19, 1951, addressed to an official of Shell Oil Company, and signed by the Baltimore District Manager of Goodyear:

"I am returning to you, unsigned, two G-1209's which request that G. D. Armstrong Co., Inc., of Laytonsville, Md., be approved as a supplying dealer for Laurel Park Servicenter at Laurel Park, Md., and Bowie Shell Service at Bowie, Md.

"My reason for taking this attitude is the fact that we very definitely discourage our dealers from selling Goodyear tires outside of their authorized territory, and in servicing either Laurel or Bowie, the Armstrong Company are out of their territory.

"A situation of this kind, of course, presents us with a serious problem for, naturally, we are not in a position to dictate to any good dealer exactly where he may sell the merchandise which he purchases from us—all we can do is ask that they remain within the boundaries which we establish. However, in the case of oil company stations where we have already authorized and established an ample number of supply points, all with good service, we cannot pay the oil company in question a commission on merchandise delivered by a dealer who is operating outside of his territorial boundaries."

Although in some cases Atlantic dealers are assigned to more than one supply point of Goodyear, in none of Atlantic's marketing regions are Atlantic dealers assigned to supply points of both rubber companies. For, as has been shown, Atlantic's sales commission contract with Goodyear is confined to the company's New England, New York and Philadelphia-New Jersey sales regions, whereas Atlantic's sales commission contract with Firestone is operative only in the Eastern Pennsylvania, Western Pennsylvania and Southern sales regions of the oil company.

1487 A reporting technique has been established whereby Atlantic may determine the exact amount of sponsored TBA purchased by each Atlantic outlet from its assigned supply point or points each month. As both rubber companies use substantially the same reporting procedure, only the one used by Goodyear need be described in detail here.

Once every month each Goodyear supply point submits a report to the Goodyear District Sales Office for his district, showing his sales of TBA during the past month to each Atlantic outlet assigned to him.¹⁰ The Goodyear District Sales Office then compiles these reports into a master list, showing TBA purchases by each individual Atlantic dealer from his assigned supply point during the past month, and sends copies of this list to Atlantic and to Goodyear's home office in Akron, Ohio. Although these forms provide the basis for computation of sales commission accruing to Atlantic each month, they also afford Atlantic a means of determining the volume of sponsored

10. One exception is Atlantic service stations acting as supply points. A 7½ percent commission is paid by Goodyear to Atlantic on the net sales value of TBA purchases by these Atlantic supply point dealers, and, consequently, no further commission is paid by Goodyear on the resale of merchandise by such Atlantic supply points to other Atlantic stations supplied by them.

TBA purchases by individual Atlantic dealers during that time.

A different procedure is followed with respect to TBA purchases by wholesale distributors of Atlantic (including, as indicated by footnote 10, *supra*, Atlantic retail dealers functioning as supply points). Wholesale distributors purchase directly from the Goodyear or Firestone district offices, and then resell such TBA to their retail dealers. Some 2,897 Atlantic retail outlets were supplied by wholesale distributors in 1956. Atlantic receives a 7½ percent sales commission on the net sales value of all sponsored TBA purchased by wholesale distributors, but no additional sales commission is paid when such purchased TBA is resold to retail dealers supplied by the wholesale distributors.

Goodyear has sales commission contracts with a number of other marketing oil companies, and these agreements are in all material respects identical with the Goodyear-Atlantic contract. Total sales by Goodyear under its sales 1488 commission contracts with such other oil companies,

including Shell Oil Company and D-X Sunray Oil Company, increased from about \$16,700,000 in 1951 to about \$36,105,000 in 1955, with sales commissions paid thereon by Goodyear increasing from approximately \$1,600,000 in 1951 to approximately \$3,300,000 in 1955. The evidence of record in this case shows that oil companies other than Atlantic have employed coercive tactics in requiring their dealers to purchase Goodyear TBA. Witness S. K. Osborn; for example, was a Sinclair dealer for 20 years, from May 1936 until May 1956. He was also a distributor of Firestone tires, and could therefore purchase Firestone tires at lower prices than Goodyear tires. He testified that he stocked Firestone tires exclusively at his service station until 1948, at which time he was given a notice of lease cancellation:

A. It was a few days after I got the lease cancel-

lation. I was disturbed about it, and I wanted to find out what it was all about. I called up the company and finally got an interview with Mr. Weller, and Mr. McCauley [Sinclair officials] . . . I asked them why I was getting a lease cancellation. They told me that I wasn't doing the right things by them, that Goodyear tires, batteries and accessories were just as much Sinclair products, just as important to the company, as Betholine gas, Sinclair Gas, whatever they were marketing, and Opaline oil. And I promised to go along with their wishes. I gave them an order for Goodyear merchandise. In a few days I had a new lease.

Q. You say you gave them an order for Goodyear TBA merchandise. Do you recall the approximate amount of the order?

A. A thousand or more dollars worth.¹¹

In order to keep his service station lease, therefore, this Firestone distributor was placed in the anomalous position of having to purchase Goodyear TBA, a competing brand, in order to maintain his status as lessee of a Sinclair service station.

1489 Another former lessee-dealer, witness MacMasters, who operated a Sinclair station from 1944 until 1954, testified that he purchased Bowers batteries for resale at his station up to sometime in 1947 or 1948. At that time he was summoned to a conference with top-level Sinclair personnel at the oil company's offices:

A. We went into a conference room, some sort of conference room that had quite a large table. They put me on one side of the table, and the other three down the other side.

So, to make the conversation short, Mr. McCauley

11. In *Osborn v. Sinclair Refining Co.*, _____ F. 2d _____ (4th Cir. 1960), the Court of Appeals held that the facts recited above by witness Osborn constituted an unlawful tying contract violative of Section 1 of the Sherman Act.

was in a hurry and he said, "We will make this brief, Mac. You are not buying batteries from us."

I said, "No, Mac, I can't buy batteries from you. I owe an allegiance to Bowers because they took care of me during the war and immediately after the war, and I promised them if they would help me so I could remain in business satisfactorily, that I would see that they maintained and kept the business."

And his almost exact words were, "We don't give a good God damn who you think you owe, you are going to buy our [Goodyear] batteries or else."

And that was the end of the meeting.

Many other advantages accrue to Goodyear, and Firestone as well, as a consequence of their sales commission contracts with oil companies. A prime advantage is participation with each oil company's sales force in a number of joint merchandising programs. This advantage commences with the selection of persons to operate newly-opened service stations or to replace outgoing dealers in previously-operated stations. A continuing responsibility of Atlantic salesmen is to help newly-recruited dealers get established. Through these salesmen, the local Goodyear or Firestone supply points are notified of the names and addresses of new dealers before they actually take over operation of their stations and, as a result, before local competitors of Goodyear and Firestone in any community become aware of a new dealer's identity. This policy was implemented by a memorandum of April 25, 1952, by Atlantic's TBA Manager Heideman to Atlantic personnel:

- 1490 "Station Openings. We ask that you instruct your Districts to establish, as a regular practice, automatic and advance notice to the Goodyear District Office, of the openings of any new stations, or of change in proprietorship at any dealer location. Such notice will be mutually beneficial to both Goodyear and ourselves. It will enable Goodyear to complete any un-

finished business with the outgoing dealer and, further, will enable them to anticipate and to move promptly in handling the new dealer's requirements."

The importance of advance notification is indicated by the fact that the initial stocking order of TBA costs approximately \$1,000—for large stations the amount may be much greater. And Atlantic's turnover of dealers is high. During 1955, 720 lessees of Atlantic ceased operation and had to be replaced, representing a turnover of about 29 percent of the oil company's total number of lessee-dealers in that year. Moreover, during the period March 1950 to June 1956, 389 new Atlantic stations commenced operations. Frequently these new or replacement dealers have recently completed Atlantic training schools in which Goodyear and Firestone TBA were used in demonstrations, and have already formed biases in favor of one or the other brand. However, the new dealer has no choice as to which of the two brands he will purchase and display—if his station is located in the three Sales Regions of the company in which Goodyear is sponsored, then he must take Goodyear TBA, and if his station is located in the three Sales Regions of Atlantic assigned to Firestone, then he must take the Firestone program.

Numerous other examples of joint merchandising programs favorable to the rubber companies having sales commission agreements with Atlantic could be cited. Although Atlantic officials stated in an intra-company memorandum shortly before the inception of the sales commission program that "Practically all sales promotional expenses [will be] assumed by supplier [Goodyear]," Atlantic aggressively assists in carrying out the Goodyear program in various ways. For example, Atlantic salesmen obtain TBA orders from dealers and send them to local Goodyear supply points, recommend minimum Goodyear TBA inventories to dealers, coordinate special Goodyear promotional

programs with radio, television, and other forms of advertising by the Atlantic company and its dealers, and assist dealers in arranging Goodyear TBA displays. Atlantic

credit card facilities are also available to motorists 1491 wishing to purchase Goodyear TBA products from

Atlantic stations. Without doubt, however, the most effective joint merchandising tactic is dual solicitation, or "double-teaming." This refers to the practice of an Atlantic salesman accompanying a Goodyear or Firestone salesman in calls upon service station operators to urge them to purchase sponsored TBA.

Goodyear's heavy reliance upon double-teaming to convert Atlantic dealers from the Lee-Exide program to Goodyear TBA was set forth in a "Confidential" memorandum of February 27, 1951, from Mr. S. A. Gaylord, manager of the rubber company's sales commission programs with oil companies, to Goodyear District Managers located within the three Atlantic Sales Regions assigned to Goodyear:

"You have been advised of the Sales Organization Meetings [between Goodyear and Atlantic sales personnel]. Mr. McConky [Goodyear Northeast Division Manager] will keynote for his Division. He will welcome the opportunity and pledge strong support and cooperation. No doubt he will stress the importance of Atlantic and Goodyear personnel getting acquainted and teaming up together when presenting the Goodyear franchise to Atlantic dealers. Because the Atlantic salesman has the 'in,' but cannot be expected to know the Goodyear story at the start, so by team work the Goodyear Sales Representative will make the presentation and also assist in training the Atlantic Representative.

"Two purposes will be accomplished by this teaming activity—first the Atlantic salesman will learn the basic details of our Franchise Presentation and, secondly—our Goodyear salesman will be very favorably introduced to the account through the sales influence of the Atlantic Representative, also bring up this point with your men."

Thereafter, on August 7, 1951, a Goodyear official wrote to Atlantic's TBA Manager, Mr. Heideman:

"Having reviewed your letter of July 30th, I am pleased to outline below for your consideration steps that I suggest be followed in the handling of a new Atlantic Dealer on the Goodyear T.B.A. Program:

"1. Arrange for double team contract by the Goodyear and Atlantic salesman."

1492 Nine additional steps were outlined in this letter of August 7, the fifth being to "Take stock order (Tires, Batteries and Accessories)" and the sixth being to "Furnish initial price lists, tires, batteries and accessories." Goodyear thus appeared confident that the presence of an Atlantic salesman together with the Goodyear representative would render unnecessary any higgling or haggling over price before obtaining an initial order for TBA from Atlantic dealers.

Similar confidence in the efficacy of double-teaming activity was expressed in a memorandum setting forth action to be taken to introduce the sales commission plan to Atlantic outlets in the three Sales Regions assigned to Firestone:

"Double-teaming activity with Firestone and oil company salesmen is then scheduled in order to sell the oil company's dealers on the Commission Plan."

Atlantic's Vice President, Mr. D. T. Colley, inaugurated the sales commission program on March 1, 1951, with the following letter to the oil company's sales force:

"I am sure that the new T.B.A. program which we have carefully selected has so many advantages that it will not be difficult to convince Atlantic dealers and distributors of its superior merit. This job is to be done with the use of all the sales equipment and knowledge that we, or our suppliers, have at our respective commands. *I expect the results of our salesmanship to be highly successful.*

"You can appreciate the fact that under no circumstances are our dealers to be made to feel that they must buy this new program just because they are Atlantic dealers. The sales you make must be made on the merits of the program and your ability to sell the dealer on its advantages to him. *Any evidence that coercion or misrepresentation were used in securing acceptance would be most embarrassing to our company.* This program is a challenge to your sales ability. I am confident that you will do a fine selling job." (Emphasis added.)

These quotations reflect the belief of Goodyear and Firestone, as well as Atlantic, that the presence of an Atlantic salesman is the almost indispensable ingredient needed 1493 to insure the success of the two rubber companies in selling their TBA products to Atlantic dealers under the sales commission plan. Perhaps one reason for this is that the annual evaluation by Atlantic salesmen of their respective lessee-dealers carries substantial weight with District Managers of Atlantic when the latter group make decisions as to extensions of dealers' leases for another year. Although respondent Atlantic has made vigorous efforts to create a record image of the typical Atlantic lessee-dealer as a stoutly independent businessman, able to close up shop as an Atlantic lessee on Saturday night and reopen down the street in a Sinclair or an Esso station the following Monday morning, the record as a whole suggests that this is a romanticized picture of a small businessman who is, more often than not, in a woefully weak bargaining position vis-a-vis his oil company lessor.

♦ The typical lessee-dealer's dependence upon his lessor-supplier is explained by the following facts: The cost of constructing an average Atlantic service station is about \$50,000. Few men who become service station operators have this amount of money—many have as little as \$1,000, and very few have as much as \$15,000. Most marketing oil

companies, therefore, build a substantial portion of their own stations and lease them to operators. The lessee-dealer uses his own capital to purchase an initial inventory of petroleum products, TBA, and tools and for other expenses incurred in commencing operations. It is frequently necessary for incoming dealers to borrow several thousand dollars from Atlantic in order to purchase these initial stocks of goods. Nor is the income of the typical lessee-dealer sufficient to enable him eventually to purchase his own station. Although an exceptional dealer with an unusually high-gallage station may earn as much as \$20,000 per year, the average annual net income of Atlantic dealers is in the range of 6 to 10 thousand dollars. But no matter how long an operator may remain as lessee, and no matter how much he strives to establish goodwill in his community, the time may come when his lease is not renewed—for any one of a number of reasons or for no reason at all except that the lessor would prefer to have someone else operate that particular station.

Many of the control devices available to Atlantic in its relationship with lessee-dealers are also applicable to contract dealers. Many of the latter are indebted to Atlantic, and most of them lease storage tanks, gasoline pumps 1494 and other equipment from their oil company supplier.

These equipment leases specify that such equipment may not be used for storage or sale of petroleum products purchased from any supplier other than Atlantic. And serious inconveniences would be caused for any contract dealer whose petroleum supply contract with Atlantic was not renewed from year to year.

Service station operators are understandably susceptible to the urgings and recommendations of their oil company suppliers and lessors in the matter of TBA. The Goodyear salesman encounters less buyer resistance on the part of such a customer when an oil company salesman is

standing nearby adding his endorsement to the sales presentation of the Goodyear representative. The technique of dual solicitation ("double-teaming") thus symbolizes in microcosm the competitive effects of the sales commission method of distributing TBA when introduced throughout the entire marketing area of a major oil company. It is to these macrocosmic effects that we now turn.

Competitive Effects of The Sales Commission Plan At The Manufacturing, Wholesale and Retail Levels.

A glance at MAP I, supra, suffices to show that competition between Firestone and Goodyear in selling to Atlantic oil company accounts have been wrecked by the operation of the sales commission system. But other evidence of record is available in abundance to illustrate the same point. The following is an exchange of correspondence between Atlantic and Goodyear concerning Republic Oil Company, a wholesale distributor of Atlantic products in Pittsburgh, Pennsylvania. (Atlantic's Western Pennsylvania sales region, it will be recalled, is assigned to Firestone.)

On August 2, 1951, Mr. E. C. Sauter, District Manager of Goodyear in Pittsburgh, addressed the following letter to Mr. F. W. McConky, Jr., Manager of Goodyear's Northeast Division:

"Republic Oil Co.

"This is a Pittsburgh concern who are acting as distributor of Atlantic products in parts of Pennsylvania and Northern West Virginia.

"The retail division of this company operates about seventy-five (75) service stations. They have never gone into a TBA program and at present have no tire hook-ups. They are in process, however, of trying to get a deal with one of the major tire companies 1495 and would like to entertain a proposition from Goodyear whereby we would sell their stations direct or through supplying dealers at a price which would be in

line with each outlet's volume with an override to the oil company.¹²

"Possibly we could use this additional distribution in the Pittsburgh area, particularly on passenger tires and tubes, so if you are interested possibly we should take the matter up with Petroleum Sales for their comments."

Thereafter, on August 3, 1951, the matter was referred by Mr. McConky to Mr. S. A. Gaylord of Goodyear in Akron:

"The attached from Eddie Sauter regarding Republic Oil and the possibility of their handling our products is a matter, in my opinion, for Akron decision, inasmuch as they [meaning Republic Oil] are distributors of Atlantic products.

"I don't want to spend any time lining up with these people if for example Atlantic-Philadelphia would prefer they handle Firestone, since this is the tire being handled by Atlantic in that area.

"Of course, I am not acquainted with the influence Atlantic might be able to bring to bear in forcing these people to a decision as to the line of tires that they—Atlantic—would like them to handle.

"At any rate, will you explore this from a management standpoint and advise so we can proceed according to Atlantic's desires."

On August 9, 1951, Mr. Gaylord addressed the following letter to Atlantic's TBA Manager, Mr. Heideman:

1496 "Mr. Sauter, our District Manager at Pittsburgh, and Mr. McConky, advises that subject account is

12. Many service station operators and TBA dealers use the term "override commission" or "overriding commission" in referring to payments by a TBA manufacturer to an oil company such as those made by Goodyear and Firestone to Atlantic. However, as respondents and their witnesses usually use the term "sales commission" to refer to such payments, we are using "sales commission" in this opinion.

considering marketing T. B. A. products and have invited us to submit a proposal.

"Before taking any action in the matter we felt that we should take the matter up with you for further guidance and your good counsel in the matter,

"Will appreciate hearing from you on this as soon as possible."

On August 14, 1951, Mr. Heideman replied to Mr. Gaylord under the heading "Republic Oil Company":

"Your note of August 9th has been received. Any overtures on your company's part to the subject could upset negotiations that we have underway at present. It was thoughtful of you to consult us and needless to say we appreciate it as we will also appreciate your rejection of the invitation." (Emphasis added.)

Not only has competition between Goodyear and Firestone been eliminated as a result of these companies' sales commission contracts with Atlantic, but even within Atlantic's sales regions assigned to Goodyear, competition among Goodyear wholesalers for the business of Atlantic accounts has been eliminated through the assignment of each Atlantic account to a designated supply point. There are 1,155 independent franchised Goodyear dealers in the Atlantic marketing territories assigned to Goodyear, but only 128 of these dealers, or 11 percent, are supply points for Atlantic dealers. The remainder, representing 89 percent of all Goodyear dealers in the three Atlantic sales regions, are substantially foreclosed from access to Atlantic accounts.

Nor is this anticompetitive allocation of customers by Goodyear among its wholesale distributors confined to Atlantic accounts alone—nine other oil companies have sales commission contracts with Goodyear, and as shown by Table IV, below, only a minute fraction of the total number of Goodyear dealers in any of these oil companies' marketing areas have been nominated as supply points for local oil company outlets:

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Table IV.

Goodyear Dealers Acting As Supply Points for Oil Company Outlets Compared With Total Number of Goodyear Dealers In Each Oil Company's Marketing Area.

Name of Oil Company	Total Number of Goodyear Dealers in Marketing Area	Number of Goodyear Supply Points
Anderson-Pritchard	3,825	28
Ashland & Subsidiaries	2,387	87
Carter	1,509	73
D-X Sunray	6,772	162
Quaker State	482	14
Richfield	1,691	3
Shamrock	1,717	25
Shell	10,756	679
Sinclair	10,963	10
Atlantic	1,155	128

The extent to which competition among Goodyear's own dealers at the wholesale level has been shattered by the operation of the sales commission plan may be inferred from the data in Table IV. In Shell's marketing area, for example, there are 10,756 Goodyear dealers; yet only 679 of these dealers have been appointed as supply points to Shell stations. In the marketing territory of D-X Sunray Oil Company there are 6,772 Goodyear dealers, but only 162 have been granted the privilege of becoming a supply point. And in Atlantic's New England, New York, and Philadelphia-New Jersey sales regions, only 128 out of 1,155 Goodyear distributors have been named as supply points.

To illustrate the elimination of competition among TBA wholesale dealers caused by the sales commission plan, evidence adduced in the course of hearings in Atlantic's Philadelphia-Suburban Sales District (one of several sales

districts comprising Atlantic's Philadelphia-New Jersey Sales Region) may be considered. As of June 30, 1956, there were 226 lessee dealers and 291 contract dealers of Atlantic in this district. These dealers were assigned to three Goodyear company stores and six independent franchised Goodyear distributors in the Philadelphia metropolitan area as follows:

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Table V.

Goodyear Supply Points in Atlantic's Philadelphia-Suburban Sales District and Atlantic Dealers Assigned to Them, 1956.

Supply Points	1955 Total Sales	No. Lessee Dealers*	No. Contract Dealers*
Goodyears District Office	\$ 43,845	2	6
Harvey W. George	239,906	45	49
F. C. Glenn	300,723	52	42
E. F. Miller	239,900	39	19
Frank Hagan	130,682	(54 dealers)**	
Ellwood E. Kieser	420,788	40	116
Edward Parris	160,100	(61 dealers)**	
Goodyear Store (Jenkintown)	None	2	4
Goodyear Store (Norristown)	None	8	1
	<u>\$1,535,944</u>		

* Includes some duplication due to 11 lessee dealers and 5 contract dealers having two alternate sources of supply.

** No breakdown is available as to the numbers of lessee and contract dealers, respectively, supplied by these two supply points. Mr. Hagan was supply point to a total of 54 lessee and contract dealers of Atlantic, and Mr. Parris to a total of 61 lessee and contract dealers of the oil company.

Witness Elmer H. Booz, for example, an Atlantic lessee dealer from 1952 until 1956, testified that Mr. Edward Parris was the designated Goodyear TBA supply point for dealers in his area. He stated that although he could have purchased Goodyear tires from other dealers at lower prices than from Mr. Parris, that he nevertheless obtained about 85 percent of his TBA requirements from Mr. Parris. One competing Goodyear dealer offered tires to Mr. Booz at a discount from list price of 10 percent plus 5 percent, plus 2 percent whereas Mr. Parris gave only a 10 percent discount, plus 2 percent discount for cash.

1499 As to competing brands of tires, Mr. Booz testified that he could make more profit on several such brands than he could on Goodyear tires. Lee tires were available at a discount from list price of 10 plus 10 plus 10 percent, plus 2 percent for cash. Moreover, the witness stated that he could never resell Goodyear tires at list price because "there is always someone from the Goodyear company or somebody else that is going to knock you down on it."¹³

Witness Francis J. Balloran commenced operating an Atlantic station in 1953 and was a contract dealer for Atlantic at the time he testified in this proceeding. He stated that after becoming an Atlantic dealer he purchased Goodyear TBA from his designated supplier, Mr. E. F. Miller (Table V, supra):

Q. Now, you stated that the Goodyear TBA was furnished by Mr. Miller?

A. That's right.

Q. Why did you buy your Goodyear TBA from Mr. Miller?

13. When Atlantic was considering adopting the Goodyear TBA program an intracompany memorandum recognized that Atlantic dealers would face " . . . a maximum amount of competition from established dealers and company stores, because it is reported that every county, marketing town and shopping center now has a Goodyear store or distributor."

A. Well, that was the setup by the Atlantic Refining Company when I first operated the business.

Q. Was it a matter of your own choice?

A. No, sir.

Q. Did you want to purchase TBA from Mr. Miller?

A. Not truthfully, no.

Q. Why didn't you?

A. Half the time when you called up you couldn't get it. Half the time you called up he didn't have it. If he did, you had to send a man with a truck and waste an hour and a half to go pick it up and bring it back.

1500 Q. Could you have purchased Goodyear tires at a cheaper price in the area?

A. Yes, sir.

Q. What was the name of the supplier?

A. Hires and Kocher.

Witness Balloran also testified that he occasionally purchased brands of tires other than Goodyear, but did not display them openly:

Q. Did you purchase U. S. tires from Harris and Leonard?

A. That's right.

Q. Were such tires advertised, U. S. tires?

A. Not out of my place they weren't.

Q. Where did you keep such tires?

A. Back on the racks, back on the oil racks, where they couldn't be seen.

Q. Seen by whom?

A. Any of the Atlantic men that came in there, the bosses.

Q. Did you purchase Lee tires?

A. Yes, sir.

Q. And where did you keep them?

A. On the racks, sir.

Nineteen witnesses representing eleven TBA wholesale suppliers in the Philadelphia-Suburban District engaged in competition with one or more of the six Goodyear supply points named in Table V, supra, testified in supplement 1501 port of the complaint. Without exception, these witnesses gave evidence that they were able to sell little or no TBA products to Atlantic dealers in their areas, and that such Atlantic dealers had stated that they must purchase their TBA needs from one or more of the designated Goodyear supply points listed in Table V.

Witness Michael T. Lanza, partner in the Philadelphia firm of Lanza Tire Service, stated that his company sells Goodyear and Firestone tires and tubes, as well as other brands, and also Exide batteries. He further stated that there are from 45 to 60 Atlantic service stations in his sales area, and that all such stations stock and advertise Goodyear tires and batteries. Witness Lanza identified Messrs. Fred Glenn and Harvey George as Goodyear TBA suppliers to Atlantic service stations in the North Philadelphia marketing area of Lanza Tire Service.

Witness Glenn L. Wetzel, President of Chester Auto Parts, Inc., of Chester, Pa., testified that his company sells Willard batteries, Dayton Rubber Co. fan belts and radiator hose, AC, Purolator and Fram oil filters, and a wide assortment of automotive waxes, polishes, and cleaners in competition with other sellers of TBA in his company's marketing area, including Mr. Edward Parris. Witness Wetzel stated that it is "rather futile" to attempt to sell automotive batteries to Atlantic dealers, and "very difficult" to sell automotive accessories to them. On cross-examination he was asked this question:

Q. Did I understand you to say that you don't sell any TBA items to Atlantic stations now?

A. Selling and buying are two different categories. They buy from me one or two filters to carry them over until Ed Parris can deliver them a case. They

buy six or eight cans of merchandising to carry them over until Ed Parris can deliver a case or two cases or five cases, whatever the deal may be.

Witness Myer Duboff is an outside salesman for Lancaster Auto Supply Company of Philadelphia. This firm competes with Goodyear dealers Frank Hagan, E. F. Miller and Ellwood Kieser, *supra*, Table V. Witness Duboff testified that he had solicited the business of about 35 Atlantic stations in his area, all of which advertise Goodyear products " . . . right down the line." 1502 He stated that he had been told by a number of Atlantic dealers that they were unable to buy TBA items from him because they "must buy from the company." On cross-examination he was queried as to statements made to him by one Atlantic dealer:

Q. You mentioned one person, Mr. I. Mann, of Haverford and Brookhaven Road?

A. That is right.

Q. As having said something to you about inability to buy from you. I am not clear as to what he said.

A. Do you want me to state what he said to me. He said to me. "I can't buy from you."

Q. Had he been buying from you?

A. He was buying odds and ends and every time I come in to sell him, he would have to hide things, you would think it was the Gestapo or something. I would go in to see him and talk to him and he would say "Mike, I can't buy from you," and I said "Why not," and he says "They know what I am doing," and I didn't think that was right.

Many other examples of such testimony could be cited, not only by former Atlantic dealers and by TBA suppliers from the Philadelphia area, but from other marketing areas of Atlantic as well. These facts are clear: Atlantic has allocated three of its six marketing regions to Firestone and the other three to Goodyear. Firestone's sales

to Atlantic outlets amounted to \$5,562,936 in 1955, the last full year for which data are available, and in the same year the rubber company paid commissions amounting to \$506,199 to Atlantic. Goodyear's sales to Atlantic outlets amounted to \$5,700,121 in 1955 and its sales commission payments to the oil company totalled \$557,559.

We find that Atlantic has used its power as a major wholesale and retail distributor of gasoline and as a lessor of numerous valuable retail gasoline distribution facilities to cause its dealers to purchase very substantial amounts of a different class of products, TBA. This finding, in conjunction with Atlantic's market position and the 1503 volume of TBA affected, would appear to bring this case within the Supreme Court's ruling in *Northern Pac. Ry. Co. v. United States*, 356 U. S. 1 (1958) and the more recent decision by the Fourth Circuit in *Osborn v. Sinclair Refining Co.*, F. 2d (4th Cir. 1960).

The Court held in the *Northern Pacific* case that tying arrangements are *per se* violative of Section 1 of the Sherman "... whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the tied product and a 'not insubstantial' amount of interstate commerce is affected" (356 U. S. at 6). The content of the phrase "sufficient economic power" with respect to the tying product was defined by the Fourth Circuit recently in the *Osborn* case.

Osborn was a lessee of Sinclair Refining Company from 1936 to 1948, at which time his lease was terminated and a new lease entered into which was continued until May 1956, when it was finally cancelled by Sinclair. During the years of Osborn's tenure as a Sinclair dealer, the oil company or its subsidiary, Sherwood Bros. Inc., was party to a sales commission contract with Goodyear in all material respects identical to the Goodyear-Atlantic and the Firestone-Atlantic arrangements in the instant

case. Osborn filed suit for treble damages under the Sherman Act, claiming that the sale of Goodyear TBA to Sinclair dealers in Maryland was in furtherance of an illegal restraint of trade. On appeal, the court held that Sinclair had gone beyond mere salesmanship in inducing its dealers to carry substantial quantities of Goodyear TBA if they wished to continue selling Sinclair gasoline under their lease and sales agreements with Sinclair.¹⁴ As phrased by the court, quoting its own earlier decision in *McElhenny v. Western Auto Supply Co.*, 268 F. 2d 332, 338 (4th Cir. 1959):

"Probably nothing is more firmly settled in our anti-trust jurisprudence than that an illegal contract may be inferred from all the circumstances."

1504 According to the court, Sinclair had violated Section 1 of the Sherman Act through a series of implied tie-in agreements with its dealers in Maryland. Moreover, the court did not regard it as significant that Sinclair had not required its dealers to purchase all their requirements of TBA from Goodyear:

"To insist upon such exclusivity in a tie-in would be inconsistent with the trend of decisions in this area. If a substantial amount of commerce is restricted by such arrangements, the standard for illegality would seem to have been met."

As to the requirement of "sufficient economic power" in the tying commodity—Sinclair's position in the petroleum retail market—the court found that in 1956, Sinclair had operated about 300 out of some 2300 retail service

14. Sinclair did not have a sales commission plan in effect throughout its entire marketing area, but only in Maryland and, to some extent, in adjacent states. F. 2d at Osborn, plaintiff in the case discussed above, testified in the instant proceeding as a witness in support of the complaint.

stations in Maryland and that those stations had sold about 10 percent of the total sale of gasoline in the same state in that year. This was held to afford Sinclair sufficient economic power in the gasoline market appreciably to restrain commerce in TBA. No one questioned the finding that Goodyear TBA purchased by Sinclair dealers in Maryland comprised a substantial amount of commerce. Accordingly, the implied tie-in agreements between Sinclair and its dealers were held to constitute a *per se* violation of the Sherman Act.

Here we find that Atlantic, which describes itself as "... a large producer and distributor of petroleum products" whose operating revenue "totalled more than one half billion dollars" in 1954, distributes gasoline directly to more than 5,500 retail service stations and through wholesale distributors to more than 2,800 additional service stations in 17 states along the Atlantic Seaboard. Approximately 81 percent of Atlantic total sales of gasoline in 1955 were accounted for by these approximately 8,300 retail service stations.

But we do not rest our decision on a mechanical application of the rule of the *Northern Pacific* and *Osborn* cases. The issue here is the legality of respondents' use of a *particular method* of distributing TBA products. Atlantic has sufficient economic power with respect to its wholesale and retail petroleum distributors to cause them to purchase substantial quantities of sponsored TBA even without the use of overt coercive tactics or of written or oral ~~typing~~ ^{being} agreements, and this power is a fact existing independently of the particular method of distributing 1505 or sponsoring TBA used by Atlantic. Determination of illegality in this context requires an evaluation of competitive effects resulting from the sales commission method of distributing TBA used by these respondents.

The record of this case conclusively establishes, in our

minds, that the sales commission contracts between Atlantic and Goodyear and Atlantic and Firestone have unlawfully injured competition in the distribution of TBA at the manufacturing, wholesale and retail levels. Firestone dealers are foreclosed from Atlantic outlets in regions assigned to Goodyear, and Goodyear dealers are foreclosed from Atlantic outlets in regions assigned to Firestone. Even within regions assigned to Goodyear, or to Firestone, only those Goodyear or Firestone dealers fortunate enough to be nominated as "supply points" have any prospect of sales to Atlantic dealers. Wholesale TBA dealers representing other tire manufacturers, for example United States Rubber Company, Lee Rubber and Tire Corporation, and Mansfield Tire and Rubber Company testified to their inability to sell tires to Atlantic service station dealers, except up an occasional "pick-up" basis when a motorist demands a tire brand other than the locally-sponsored offering available at the station.

Battery manufacturers and certain accessory suppliers are, if possible, even more severely disadvantaged by the sales commission system than are tire companies competing with Firestone and Goodyear. Local wholesale distributors of Exide, Willard, Bowers and other brands of batteries testified to their inability to sell batteries to Atlantic stations except upon a pick-up basis. The most shocking feature of the sales commission system as to batteries, however, is the fact that the sales commission contracts with Atlantic enable Goodyear and Firestone to exclude *their own suppliers of batteries* from the wholesale and retail markets represented by Atlantic service station outlets. For the evidence of record indicates that Goodyear and Firestone both refused to execute sales agreements relating only to tires and tubes, but insisted that it include *all* TBA items sold by them or none. An analogous situation exists as to certain accessory products,

for example, "Mac's" brand of polishes, waxes, and cleaners.

Moreover, as one of the chief characteristics of the sales commission plan is that it strengthens wholesale distributors of Goodyear and Firestone by pre-empting for their benefit a substantial segment of all of the various local wholesale TBA markets in Atlantic's marketing area, 1506 the sales commission system stands as a bar to the ~~expansion~~ by smaller TBA manufacturers of their own distributive organizations. As respondents concede, a substantial proportion of all replacement TBA items sold to motorists are accounted for by service stations and "service stations, . . . constitute a large and increasingly important market" for TBA products. Thus, the competitive dislocations engendered by the sales commission plan at the wholesale level extend backward to the manufacturing level.

Finally, the unfair competitive advantages resulting from the sales commission plan are not confined to the manufacturing and wholesale levels—they extend forward to the retail level as well. Many of the wholesalers who testified in this proceeding *also* sell at retail, directly to motorists. To the extent, therefore, that suppliers of TBA competing with distributors of Goodyear and Firestone at the wholesale level are weakened by the operation of the sales commission system, the dealers are also weakened at the retail level, in instances where they are engaged in retail as well as wholesale operations.

Counsel for Atlantic contend, however, that no competitive consequences attend the sales commission plan which did not characterize the purchase-resale program employed by Atlantic prior to 1951. This point deserves consideration since it implies that no useful purpose would be served by outlawing the sales commission plan between Goodyear and Atlantic as Atlantic would merely return

to the purchase-resale method of distributing TBA, with the result that Goodyear and Firestone dealers would lose a substantial volume of sales, but without improving the lot of competing TBA suppliers as they would still be unable to sell TBA to Atlantic dealers. We believe this argument to be without merit for several reasons.

First of all, what course of action Atlantic may follow with respect to TBA if the sales commission plan is outlawed is entirely speculative. Assuming for the moment, however, that Atlantic will return to the purchase-resale plan and flout the antitrust laws by requiring its dealers to handle Atlantic TBA exclusively, or even substantially,¹⁵ it is obvious that local wholesalers of TBA competing with Firestone and Goodyear dealers in Atlantic's marketing area will at least no longer be laboring under the handicap of their competitors representing Firestone and Goodyear having already pre-empted a substantial share of the local wholesale TBA market. As the situation stands under the sales commission plan, local dealers representing Firestone and Goodyear are assured of a substantial chunk of the market before the competitive race at the wholesale level even begins (See Table V., *supra*). Abolition of the sales commission system will at least terminate the unjust advantage presently enjoyed by distributors of Firestone and Goodyear over local competitors representing other tire manufacturers and TBA suppliers.

Not only do the competitive effects of the sales commission plan differ from those of the purchase-resale plan at the wholesale level, but at the manufacturing level as well. When Atlantic was considering changing from the purchase and resale of Lee tires and Exide batteries to some

15. Cf., *Standard Oil Co. v. United States*, 337 U. S. 293 (1949); *Northern Pac. Ry. Co. v. United States*, *supra*; *Osborn v. Sinclair Refining Co.*, *supra*; *United States v. Sun Oil Co.*, 176 F. Supp. 715 (E. D. Pa. 1959).

other method of merchandising TBA, it contacted several of the larger tire and rubber companies, including Good-year, Firestone, The B. F. Goodrich Company, United States Rubber Company and General Tire and Rubber Company inquiring "... what interest you may have in the sale of your tires and tubes through Atlantic accounts."

Propositions were requested not only as to principal brands of these manufacturers, but as to secondary brands controlled by them and private brands as well. At the same time, Atlantic also contacted Mansfield Tire and Rubber Company and Lee Rubber and Tire Corporation soliciting proposals from them to furnish a private brand tire to Atlantic. This suggests that the smaller tire companies are able to compete with their smaller competitors in selling tires to oil company accounts on a purchase and resale basis. The evidence also shows, however, that the smaller tire companies are unable to compete with larger tire manufacturers for the business of oil companies using the sales commission plan because the smaller tire companies lack distribution facilities which blanket the entire sales area of a major marketing oil company desiring to adopt the sales commission plan. This was established by the testimony of Vice-President Colley of Atlantic, who appeared as a witness on behalf of this respondent.

A major oil company's decision to adopt the sales commission method of distributing TBA thus inaugurates a vicious cycle of injurious competitive effects: smaller 1508 tire and rubber companies are unable to compete in the first instance for the business of the oil company desiring to adopt a sales commission plan because they lack widespread distribution facilities at the wholesale and resale levels; and yet the operation of the sales commission plan stands as a bar to future expansion of the smaller tire companies' distributive systems since they are thereby foreclosed from a substantial segment of the wholesale and

retail market after the oil company has adopted a sales commission plan offered by a larger tire company.

We believe that the sales commission method of distributing TBA presents a classic example of the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution). Other anticompetitive effects of the sales commission system are so obvious that they require no detailed consideration. The public suffers because it cannot rely upon competitive rivalry among local TBA wholesalers to insure that service station outlets will be able to obtain price savings which may be passed along to consumers. And, too, the system prevents the service station operator himself from using his buying power to further his own business advantage instead of that of his oil company supplier. As the Court of Appeals said in its recent *Osborn* decision, in a situation identical in its essentials with the present case, insofar as the service station dealer is concerned:

"Because of its financial interest in having its lessee-dealers sell Goodyear TBA rather than competing brands, Sherwood-Sinclair engaged in a course of conduct designed to bring about this result. The facts in this case utterly fail to reveal any business motive for the defendant's policy that its dealers should handle Goodyear products instead of others. Admittedly, it was proper for Sinclair-Sherwood to desire its lessees to carry a complete, high-quality line of TBA. It is conceded, however, that there are other competing brands, and there is no suggestion that Goodyear was superior to the other brands of TBA, or that there was any benefit to the dealers in handling Goodyear rather than one of the other lines."

1509 Several additional points are raised by Atlantic, but we believe only one of these requires detailed consideration in this opinion. Respondent contends that it was error, violative of due process of law, for the same

hearing examiner to have presided over and rendered initial decisions in both this case and in Docket 6487, The Firestone Tire & Rubber Company and Shell Oil Company. The crux of the contention seems to be that the hearing examiner could not possibly have rendered his initial decision in this case solely upon the basis of the record of the instant proceeding, since he also heard testimony and received evidence involving Atlantic's sales commission plan with Firestone in Docket 6487. As respondent puts it, "While Atlantic has the utmost respect for the Hearing Examiner's integrity and ability, Atlantic submits that he could not humanly exclude from consideration his impression of the witnesses' demeanor and credibility in the Firestone-Shell proceedings and that his decision against Atlantic based on impressions gained in those other proceedings is a violation of due process."

Our study of the initial decision and of the record in this case indicates that there is no basis for the claim that the hearing examiner considered extra-record evidence in making his findings of fact and conclusions of law. Substantial evidence is present in the record of this case to support every finding of fact and conclusion of law by the hearing examiner. In any event, our own independent study of the record herein is the basis for the findings of fact and conclusions of law set forth in this opinion.

Conclusion.

Other exceptions of respondents Atlantic and Goodyear have been considered and rejected. The appeal of respondent Atlantic is denied. The appeal of counsel supporting the complaint is granted in part and denied in part. The initial decision, to the extent that it is contrary to the views expressed in this opinion, will be modified to conform with such views. An appropriate order will be entered.

March 9, 1961.

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

The Goodyear Tire & Rubber
Company,*Petitioner,**vs.*

Federal Trade Commission,

Respondent.

No. 13339.

PETITION TO REVIEW AND SET ASIDE ORDER OF
THE FEDERAL TRADE COMMISSION.To the Honorable Judges of the Court of Appeals for the
Seventh Circuit:

Petitioner The Goodyear Tire & Rubber Company, a corporation, pursuant to Section 5(c) of the Federal Trade Commission Act (15 U. S. C. 45), respectfully requests this Court to review and set aside an order and decision of the Federal Trade Commission, respondent herein, entered in the Matter of The Goodyear Tire & Rubber Company, a corporation, and The Atlantic Refining Company, a corporation, Federal Trade Commission Docket No. 6486, and respectfully shows:

I.

Jurisdiction and Venue.

Petitioner is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal place of business located in the City of Akron, Ohio. This proceeding is brought by petitioner under Section 5(c) of the Federal Trade Commission Act (15 U. S. C. 45) to review and set aside the aforesaid order of the Federal Trade Commission. The venue is based upon the

provision of that section permitting any person, partnership or corporation required by an order of the Federal Trade Commission to cease and desist, to obtain judicial review by filing a written petition with the court of appeals of the United States within any circuit where the method of competition or the act or practice in question was used or where such person, partnership or corporation resides or carries on business. Petitioner carries on business in Illinois, Indiana and Wisconsin and has district offices and retail outlets within this area.

II.

A Concise Statement of the Nature of the Proceedings.

On or about January 11, 1956 the Federal Trade Commission issued its original complaint against petitioner and The Atlantic Refining Company. On May 22, 1956 the complaint was amended by adding The Goodyear Tire & Rubber Company, Inc., a wholly-owned subsidiary of respondent The Goodyear Tire & Rubber Company, as a party respondent. (Since the date of this amendment The Goodyear Tire & Rubber Company, Inc. has been merged into its parent company.)

The amended complaint alleged that the operation of a so-called sales commission arrangement for marketing tires, batteries and automobile accessories (TBA) in effect between petitioner and Atlantic under which petitioner paid Atlantic a commission for promoting the sale of petitioner's TBA products to petroleum outlets of Atlantic, violated Section 5 of the Federal Trade Commission Act. In addition, petitioner is charged with having entered into substantially similar arrangements with the Shell Oil Company and with other unnamed oil companies not parties to the proceeding, and Atlantic is charged with having entered into a substantially similar arrangement with The Fire-

stone Tire & Rubber Company which was not a party to the proceeding. It was claimed that all such agreements, and the acts and practices of Atlantic and petitioner thereunder, constituted unfair methods of competition and unfair acts and practices within the intent and meaning of the Act. The complaint did not allege a conspiracy but in essence charged that the various agreements were illegal because of the control which Atlantic and which the various non-respondent oil companies having agreements with petitioner exercised over service stations and distributors selling their respective petroleum products.

On or about July 6, 1956 petitioner filed its answer to the amended complaint in which it acknowledged that it had entered into a sales commission contract with Atlantic and that it had entered into sales commission agreements with oil companies other than Atlantic, but in which it denied that it had violated the Federal Trade Commission Act and in which it affirmatively pleaded inter alia that the sales commission plan is a practical, efficient and inexpensive method of distribution of TBA products to motorists and that it is a legitimate and competitive method of marketing which benefits suppliers of TBA products, oil companies, dealers and distributors of petroleum products and the consuming public.

Between the latter part of 1956 and November 1958 hearings were held in Washington, D. C., Philadelphia, Pennsylvania, Wilmington, Delaware and Baltimore, Maryland before Hearing Examiner Earl J. Kolb. On October 23, 1959 the Hearing Examiner filed his Initial Decision dismissing the complaint as to petitioner but concluding that Atlantic had coerced a substantial number of its dealers into purchasing sponsored TBA. The Hearing Examiner entered an order against Atlantic prohibiting future acts of coercion.

Both counsel supporting the complaint and Atlantic ap-

pealed from the Hearing Examiner's Initial Decision and Order. Petitioner filed a reply to the appeal brief of counsel supporting the complaint. On June 23, 1960 oral argument was had before the Federal Trade Commission with one of the five Commissioners not participating. The opinion of the Commission dated March 9, 1961 denied the appeal of Atlantic and granted in part and denied in part the appeal of counsel supporting the complaint. The Commission thereupon issued a final order which, among other things, directs Atlantic to cease and desist from entering into any contract, agreement or combination, express or implied, with petitioner or with any other rubber company or tire manufacturer or any other supplier of tires, batteries and/or accessories whereby Atlantic receives anything of value in connection with the sale of TBA products to any wholesaler or retailer of Atlantic petroleum products by any marketer or distributor of TBA products other than Atlantic.

With respect to petitioner, the Hearing Examiner's Initial Decision dismissing the complaint was reversed and petitioner was enjoined, among other things, from having sales commission arrangements with Atlantic or with any other marketing oil companies.

The order entered by the Federal Trade Commission with respect to petitioner provides as follows:

"It Is Further Ordered that respondents The Goodyear Tire and Rubber Company, and The Goodyear Tire and Rubber Company, Inc. (hereinafter collectively referred to as 'Goodyear'), corporations, and their officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the promotion, offering for sale or sale and distribution of tires, inner tubes, batteries and automotive accessories and supplies (hereinafter referred to as 'TBA products') in commerce, as 'commerce' is defined in the Federal Trade Commission Act,

do forthwith cease and desist from, directly or indirectly:

- “1. Entering into or continuing in operation or effect any contract, agreement or combination, express or implied, with The Atlantic Refining Company or with any other marketing oil company whereby Goodyear, directly or indirectly, pays or contributes anything of value to any such marketing oil company in connection with the sale of TBA products by Goodyear or any distributor of Goodyear products to any wholesaler or retailer of petroleum products of such marketing oil company;
- “2. Paying, granting or allowing, or offering to pay, grant or allow, anything of value to The Atlantic Refining Company or to any other marketing oil company for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing or promoting the sale of TBA products, directly or indirectly, by Goodyear or any distributor of Goodyear products to any wholesaler or retailer of petroleum products of such marketing oil company;
- “3. Reporting or participating in the reporting to The Atlantic Refining Company or any other marketing oil company concerning sales of TBA products to wholesalers or retailers of petroleum products, individually or by groups, of any such marketing oil company.”

Said order further provides that the petitioner shall, within sixty days after service of said order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with said order.

III.

Grounds for Relief.

The grounds on which relief is sought are:

1. The Commission has erred in concluding that petitioner has violated Section 5 of the Federal Trade Commission Act.

2. The Commission has failed to state adequately its findings as to the facts as required by said statute and by the Administrative Procedure Act.

3. Such findings and conclusions as the Commission has made are not supported by the evidence.

4. Among the statements made in the Commission's opinion which are not supported by the evidence and which may or may not constitute findings of fact or conclusions of law are statements to the effect:

(a) that the sales commission contract between respondent Atlantic and petitioner has unlawfully injured competition in the distribution of TBA at the manufacturing, wholesale and retail levels;

(b) that respondent Atlantic has coerced a substantial number of its dealers to purchase substantial quantities of sponsored TBA through threats of lease cancellation or other retaliatory action;

(c) that respondent Atlantic has sufficient economic power over its wholesale and retail distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics;

(d) that respondent Atlantic has used its power as a major wholesale and retail distributor of gasoline and as a lessor of numerous valuable retail gasoline distribution facilities, to cause its dealers to purchase substantial amounts of TBA;

(e) that petitioner's agreements with non-respondent oil companies are in all material respects identical with the sales commission contract between petitioner and respondent Atlantic;

(f) that non-respondent oil companies have employed coercive tactics in requiring their dealers to purchase petitioner's TBA products;

(g) that competition between petitioner and non-respondent Firestone has been eliminated as a result of these companies' sales commission contracts with respondent Atlantic;

(h) that competition among petitioner's wholesalers for the business of respondent Atlantic's accounts has been eliminated through the assignment of each Atlantic account to a designated supply point;

(i) that there has been an anticompetitive allocation of customers by petitioner among its wholesale distributors handling the petroleum products of respondent Atlantic or the petroleum products of non-respondent companies;

(j) that petitioner refused to execute sales agreements relating only to tires and tubes but insisted that such agreements include all TBA items sold by petitioner or none;

(k) that smaller tire companies are unable to compete with larger tire manufacturers for the business of oil companies using the sales commission plan because the smaller tire companies lack distribution facilities or for any other reason.

5. The inferences drawn by the Commission based upon the facts of record are erroneous in fact and in law.

6. There is insufficient evidence from which the Commission can lawfully conclude that the sales commission

contract between petitioner and respondent Atlantic, or that anything petitioner has done pursuant to said contract, constitutes unfair methods of competition or unfair or deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act.

7. The Commission's interpretation and application of Section 5 of the Federal Trade Commission Act is contrary to the intent of Congress as expressed in the legislative history and is contrary to the general public interest and to prior judicial decisions.

8. Because of the manner in which this case and two companion cases (Docket No. 6485 and Docket No. 6487) were heard contemporaneously by a single Hearing Examiner, the Commission in this proceeding has deprived petitioner of its rights to a fair hearing and has denied petitioner its rights to procedural due process under the Constitution and the Administrative Procedure Act.

9. The order of the Commission is not warranted by the facts, is not supported by adequate findings, is arbitrary and exceeds the jurisdiction of the Commission.

10. The Commission's order discriminates against petitioner and violates the Fifth Amendment of the Constitution in that it arbitrarily denies petitioner the opportunity for competing for business and thereby deprives it of valuable property rights without due process of law.

IV.

Relief Prayed.

Wherefore, petitioner respectfully prays that this Court review the aforesaid proceedings and the order to cease and desist entered thereon, and set aside said findings, conclusions and order, as well as direct the Commission to dismiss its complaint against petitioner and to award such further or alternative relief as may seem just and proper to the Court.

Dated: May 10, 1961.

Respectfully submitted,

Cahill, Gordon, Reindel & Ohl,

By Mathias F. Correa,

Mathias F. Correa,

80 Pine Street,

New York 5, New York,

Attorneys for The Goodyear

Tire & Rubber Company.

1 **BEFORE THE FEDERAL TRADE COMMISSION.**
 • • (Caption—6486) • •

Room 332
Federal Trade Commission Bldg.
Washington, D.C.
Tuesday, October 30, 1956

Met, pursuant to agreement, at 1:00 p.m.

Before: Earl J. Kolb, Hearing Examiner.

Appearances:

James S. Kelaher, William J. Boyd, Jr., and Peter J. Dias, Attorneys for the Federal Trade Commission.

Thomas C. Mason, and David Ingraham, Attorneys for the Respondents, The Goodyear Tire & Rubber Company and The Goodyear Tire and Rubber Company, Inc., Cahill, Gordon, Reindel & Ohl, 63 Wall Street, New York, N.Y.

Frederic L. Ballard, Jr., and Joseph K. Gordon, of Ballard, Spahr, Andrews & Ingersoll, attorneys for the Respondent, The Atlantic Refining Company, 1035 Land Title Building, Philadelphia 10, Penna.

2

PROCEEDINGS.

Hearing Examiner Kolb: This is the initial hearing in the matter of Goodyear Tire and Rubber Company and the Atlantic Refining Company, Docket 6486.

Mr. Kelaher: Mr. Examiner, to bring this matter up to date, I would like the record to show that pre-trial conferences were held on September 17, 1956, October 29, 1956 and the morning of October 30, 1956.

During the course of these pre-trial conferences and also as a result of informal discussions between counsel for the Respondents and counsel in support of the complaint, we have materially reduced the testimony to be adduced by counsel supporting the complaint.

During the course of the conferences and informal discussions we discussed three topics in general: (1) admissions (2) documents to be submitted by counsel in support of the complaint, and (3) possible stipulations as to the facts.

I would like to take this opportunity to commend the spirit with which counsel for the Respondents entered into these discussions. They have been very cooperative.

As the first order of business, I would like to hand to your Honor a copy of joint admissions of the Goodyear Tire and Rubber Company, the Goodyear Tire and Rubber Company, Inc., and the Atlantic Refining Company (handing) covering paragraphs 1 through 8 of the complaint as amended.

3 Hearing Examiner Kolb: Do you wish this to be read into the record and copied by the reporter?

Mr. Kelaher: Yes, your Honor.

Mr. Mason: No objection.

Mr. Ingraham: No objection.

Hearing Examiner Kolb: Will you copy this into the record, please?

(The document referred to is as follows:

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption.—6486) * *

Admissions of The Goodyear Tire & Rubber Company,
The Goodyear Tire & Rubber Company, Inc., The Atlantic
Refining Company.

The Goodyear Tire & Rubber Company (hereinafter referred to as "Goodyear"), The Goodyear Tire & Rubber Company, Inc. (hereinafter referred to as "Goodyear, Inc.") and The Atlantic Refining Company (hereinafter referred to as "Atlantic"), make the admissions set forth below solely for the purpose of this proceeding and for no other action, case or proceeding. The making of
4 these admissions is not a concession that the facts so admitted are relevant or material to this proceeding or that they establish a cause of action or basis for a proceeding under Section 5 of the Federal Trade Commission Act. Insofar as the admissions cover matters as to which any respondent denied knowledge in its answer, such respondent makes these admissions in reliance on the admissions of the other respondents.

1. Goodyear is a corporation organized, existing and doing business under the laws of the State of Ohio, with its principal office and place of business located at 1144 East Market Street, Akron, Ohio. Goodyear operates its business directly and does business with several subsidiaries.

Goodyear, Inc. is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal offices and place of business located at 1144 East Market Street, Akron, Ohio. Goodyear Inc. is a wholly-owned subsidiary of Goodyear and sells products of Goodyear. Some of the principal officers of Good-

year are also officers of Goodyear, Inc. and the two companies share the same principal office and place of business.

Atlantic is a corporation organized, existing and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at
5 260 South Broad Street, Philadelphia, Pennsylvania.

2. Goodyear is the largest manufacturer of rubber products in the United States, manufacturing a variety of rubber and associated products, including tires and inner tubes. The total net sales of Goodyear made directly and through its subsidiaries were more than one billion dollars in 1954.

Goodyear, Inc. sells various products manufactured by Goodyear, including tires and inner tubes. It also purchases for resale and distribution automotive batteries, parts and accessories and other items referred to by Goodyear as Car and Home Merchandise. Said products are sold directly to the consuming public by approximately 500 company-owned and operated retail outlets, and to other retailers and wholesalers having places of business located in the various states of the United States.

Automotive tires, inner tubes and batteries and certain automotive parts, accessories and supplies are known in the trade as "TBA" products (an abbreviation for tires, batteries and accessories.)

3. Atlantic is a large producer and distributor of petroleum products. Directly or through its wholly-owned or controlled subsidiaries, Atlantic is engaged in substantially all branches of the petroleum industry. It produces
6 crude oil from its wells, cracks and refines gasoline and refines and produces lubricants and a wide range of other petroleum products. Sales of said products are made to many types of customers, including petroleum retail dealers, some of whom operate service stations, and petroleum wholesalers (hereinafter referred to as "distribu-

tors"). In 1954 its sales and operating revenue totalled more than one-half billion dollars. In certain cases, under a written contract (as amended) with Goodyear, Inc., Atlantic promotes the sale of certain TBA products and certain Car and Home Merchandise sold by Goodyear, Inc.

4. In the course and conduct of their businesses, Goodyear and Goodyear, Inc. ship certain products, including TBA products, or cause them to be shipped from the states in which said products are manufactured or warehoused to purchasers thereof located in other states of the United States and the District of Columbia.

In the course and conduct of its business, Atlantic ships some of its petroleum products from the states in which such products are manufactured, refined, stored or warehoused to terminals, ~~bulk~~^{bulk} plants, or bulk storage located in other states for the purpose of sale and distribution to resellers and consumers in such other states.

5. Goodyear and Goodyear, Inc. compete with others in selling certain TBA products and, as hereinafter
7 more fully described, Atlantic renders sales assistance to Goodyear, Inc. in promoting the sale of TBA products.

6. Goodyear, Inc. sells TBA products directly and through wholesalers to many classes of customers, including service station operators who purchase for resale to consumers for replacement use in their automobiles. Service stations, by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They have constituted an increasingly important market for TBA products at the present time.

Atlantic sells its petroleum products to more than 5,600 retail dealers, a substantial unnumber of whom operate service stations, and to distributors who in turn sell said products to more than 2,800 retail dealers, a substantial

number of whom operate service stations. In addition to petroleum products, a substantial number of the dealers sell TBA products.

7. Goodyear, Inc. has entered into a sales commission contract with Atlantic with respect to certain TBA products and certain Car and Home Merchandise, as to the terms of which reference is made to the contract itself and to the various amendments thereto. Atlantic has also entered into a contract containing generally similar terms with the Firestone Tire and Rubber Company (hereinafter referred to as "Firestone"). The respondents reserve the right to move to strike from the record this and all other references to Firestone contained herein and to object to the admission in evidence of any other testimony relating to Firestone.

There are a large number of dealers and distributors who sell principally Atlantic petroleum products. Under its sales commission contracts with Goodyear, Inc. and Firestone, Atlantic recommends, urges and endeavors to persuade some of these dealers and distributors in specified areas to purchase the products to which the aforesaid sales commission contracts relate and receives sales commissions in return for such services. Such urging, recommendation and persuasion is a factor which, with many other factors, causes some of these dealers and distributors to make purchases of products covered by the contracts. The dealers and distributors do not receive any part of commissions paid under the contracts.

The dealers and distributors selling the petroleum products of Atlantic operate as independently owned business enterprises. Atlantic has various contractual arrangements with said dealers and distributors as to which arrangements reference is made to the contracts themselves.

8. Goodyear, Inc. has sold TBA products and certain

Car and Home Merchandise to dealers and distributors
9 selling petroleum products of Atlantic and has received
valuable sales assistance from Atlantic in connection
with such sales. Goodyear, Inc. made sales covered by
its agreement with Atlantic, amounting to \$2,445,808 in 1951
and \$4,175,890 in 1952, on which it paid Atlantic commis-
sions of \$239,250 and \$411,743 respectively.

Firestone reported sales covered by its agreement with
Atlantic amounting to \$3,809,843 in its fiscal year 1952 and
\$4,796,304 in its fiscal year 1953, on which it paid Atlantic
commissions of \$354,354 and \$446,286 respectively.

Mr. Kelaher: The second subject I would like to discuss
relates to the documents to be marked for identification
as submitted by counsel in support of the complaint.
During the pre-trial conference yesterday and this morning,
we prepared a list of identification numbers and descrip-
tions of such documents and we move that that be incorpor-
ated into the record at this time.

I would like to call your Honor's attention to the fact
that the first portion of that list has been transcribed and is
now available, and the second portion of the list should be
available for introduction into the record before this hear-
ing is adjourned this afternoon.

I would also like to call your Honor's attention to
10 the fact that this list of documents and Commission
exhibits for identification numbers has not been
checked and is being offered subject to verification and
possible minor changes in the descriptions.

Hearing Examiner Kolb: This does not show the items
objected to or not objected to.

Mr. Kelaher: I was coming to that, Your Honor. I will
now list the items broken down into the various categories.

Hearing Examiner Kolb: First I suppose we better have

the reporter mark the exhibits as directed in the pre-trial conference document, which will be copied into this present record to show the identification of the exhibits.

Mr. Mason: That is agreeable.

Mr. Ballard: Yes.

The documents referred to and identified in pre-trial conference this date were marked as Commission's exhibits for identification as follows:

Cxid	Description.
1-A through C	Letter dated January 19, 1948, from J. S. Parks, Purchasing Agent, ARCo, to S. A. Gaylord, Goodyear, Inc., with attachment.
2	Letter dated February 27, 1948, from S. A. Gaylord, Manager Petroleum Sales Department, Goodyear, Inc., to J. S. Parks, ARCo.
11 3	Letter dated March 29, 1948, from J. S. Parks, ARCo, to S. A. Gaylord, Goodyear, Inc.
4-A and B	Letter dated May 4, 1949, from S. A. Gaylord, Goodyear, Inc., to S. J. Heideman, ARCo.
5-A and B	Memo dated August 29, 1949, from S. A. Gaylord, Goodyear, Inc., to Mayl, Holt, Osmun, Metzger, Harper, Cameron, Harrah, and Gaylord, re "Atlantic Refining."
6	Letter dated May 23, 1950, from S. J. Heideman, ARCo, to S. A. Gaylord, Goodyear Company, enclosing Exhibit CXID 7.
7	Letter dated 5-23-50, from S. J. Heideman, ARCo, to E. R. Cox, et al., ARCo, enclosed with CXID 6.
8-A and B	Letter dated May 25, 1950, from S. A. Gaylord, Goodyear, Inc., to S. J. Heideman, ARCo.
9-A through E	Document undated and unsigned, the opening words of which are "Here, then, are the important reasons for the company's preference for the Goodyear program."

- 10-A through E Memo dated May 31, 1950, unsigned entitled: "Atlantic Refining Co.—Sales Commission."
- 12 11-A and B Undated, unsigned memorandum entitled "Goodyear-Atlantic Program Experimental."
- 12 Letter dated 6-12-50, from A. R. Sanborn, ARCo, to Atlantic dealers and petroleum distributors in Newark district.
- 13-A through E Letter contract dated June 1, 1950, from Goodyear, Inc., to ARCo, with Exhibit A attached.
- 14 Letter dated July 5, 1950, from S. A. Gaylord, Goodyear, Inc., to S. J. Heideman, ARCo.
- 15-A and B Memo dated August 2, 1950, from Gaylord, Goodyear, to L. W. Baker, Assistant Counsel, Goodyear, entitled "Atlantic Refining Co."
- 16-A and B Letter dated April 3, 1951, from D. T. Colley, V. P., ARCo, to Victor Holt, Jr., V. P.; Goodyear Co., with acceptance by Goodyear, Inc.
- 17-A and B Letter dated June 16, 1950, from S. A. Gaylord to S. J. Heideman, ARCo.
- 18-A and B Intra-company memo dated July 25, 1950, from J. W. Basista, Goodyear, to S. A. Gaylord, copies to Holt, et al. Subject: "Atlantic Refining Company; Newark District."
- 19 Letter dated November 2, 1950, from S. A. Gaylord, Goodyear, Inc., to S. J. Heideman, ARCo.
- 13 20-A and B Letter dated 6-29-50, S. A. Gaylord, Goodyear, Inc., to S. J. Heideman, ARCo.
- 21 Letter dated 7-1-50, S. J. Heideman, ARCo, to S. A. Gaylord, Goodyear Co.
- 22-A and B Letter dated 1-23-51, J. W. Basista, Goodyear, Inc., to S. J. Heideman, ARCo.
- 23-A and B Memorandum by S. A. Gaylord, undated, entitled "Oil Company Sales Material 1950. Advance Information—Details to Follow."

24-A through G "Confidential" memo from S. A. Gaylord, Goodyear, Inc., to seven district managers re "Atlantic Refining Company."

25 Document entitled "Proposed Outline of Meeting, Atlantic-Goodyear sales organization meeting."

26 Document entitled "Suggested Atlantic-Goodyear Introductory Dealer Meeting."

27 Document entitled "Goodyear District Manager Presentation (Atlantic-Dealer Meeting) Outline."

28-A and B Document entitled "The Atlantic Refining Company Sales Personnel, Territory Assigned to Goodyear."

14 29 Document entitled "Sample of Atlantic Letter to Dealers, etc."

30 Document entitled "Atlantic-Goodyear Sales Organization Meeting Props and Meeting Materials."

31 Document entitled "Goodyear Introductory Package for Atlantic Dealers."

32 Inter-Office Communication dated February 28, 1951, from W. E. Blank, Battery Sales, (Sales Manager, Replacement Sales, Auto-Lite Battery Corporation.) to L. A. Knight, of Auto-Lite copy to J. C. Thomas, Goodyear.

33 Memo dated March 12, 1951, from G. L. Wright, Goodyear to District Operating Managers. Subject: "Atlantic-Lee Adjustments."

34-A through D Letter dated March 12, 1951, from H. E. Ammerman, Goodyear, Inc., to six District Service Representatives. Subject: "Atlantic Refining Company", with enclosure.

35 Letter dated May 1, 1951, from S. A. Gaylord Goodyear, Inc., to S. J. Heideman, ARCo. Subject: Schrader inventory.

36 Letter dated May 7, 1951, from W. C. Hoffman, ARCo, to S. A. Gaylord, Goodyear, Inc. Subject: Schrader inventory.

- 15 37 Letter dated May 28, 1951, from S. J. Heideman ARCo to S. A. Gaylord, Goodyear. Subject: "Goodyear Program Exide Battery Adjustments."
- 38 Letter dated June 1, 1951, from S. A. Gaylord, Goodyear, to S. J. Heideman, ARCo.
- 39 Document dated March 1, 1951, entitled "Plan for Handling Adjustments for Atlantic Dealers on Exide Batteries" to be Replaced with Firestone Batteries."
- 40-A and B Letter dated 2-9-51, from S. J. Heideman, ARCo, to J. E. Mayl, Goodyear Co., with enclosure. Pencilled notation on margin of enclosure.
- 41-A through E Goodyear, Inc., Form G-1209, original and three copies, including descriptive note.
- 42-A and B Goodyear, Inc., form G-1204 (1-51), including descriptive note.
- 43-A and B Goodyear, Inc., Form G-1201 (1-50), including descriptive note.
- 44-A and B Goodyear, Inc., Form G-1208 (1-51), including descriptive note.
- 45-A and B Goodyear, Inc., Form B-80 (6-50), including descriptive note.
- 46-A and B Goodyear, Inc., inter-office letter dated 16 3-7-51, S. A. Gaylord to J. E. Mayl. Subject: "Atlantic Refining Co., Philadelphia."
- 47-A and B Letter dated 4-26-51, J. P. Miller, ARCo, to R. S. Zinn, Wilmington, Delaware, et al. Subject: "Tire Adjustments—Atlantic-Lee Road Hazard Guaranty."
- 48-A through F Pages 2-5 of ARCo document entitled "Goodyear TBA Bulletin #22," dated 6-29-51, including transmittal note, W. C. Hoffman, ARCo, to S. A. Gaylord, Goodyear. The fifth page of this exhibit is entitled "The Atlantic Refining Company Progress through June 25, 1951."

- 49 Letter of 7-31-51, from S. J. Heideman, ARCo, to S. A. Gaylord, Goodyear Co. Subject Goodyear Program.
- 50-A and B Letter dated 8-6-51, S. A. Gaylord, Goodyear, Inc., to S. J. Heideman, ARCo. Subject: Major Home Appliances.
- 51 Letter dated 8-7-51, from J. O'Neill, Goodyear, Inc., to S. J. Heideman, ARCo.
- 52-A and B Goodyear tabulation entitled "Summary of Sales and Commissions covered by the Sale Commission Plan—Atlantic Refining Company."
- 17 53 Goodyear tabulation entitled "Summary of Sales and Commissions covered by the Sales Commission Plan," listing eight oil companies.
- 54 Goodyear tabulation entitled "Dollar Volume of Sales to Atlantic Accounts upon which Commissions were paid and amounts of such commissions, 1951, 1952, and the first six months of 1953."
- 55 Goodyear tabulation showing names of 13 oil companies with which Goodyear, Inc., had Commission arrangements, et cetera.
- 56 Memo dated August 3, 1951, from F. W. McConky, Jr., Goodyear, to S. A. Gaylord, Subject: "Republic Oil Co."
- 57 Letter dated August 9, 1951, from S. A. Gaylord, Goodyear, Inc., to S. J. Heideman, ARCo. Subject: "Republic Oil Company."
- 58 Letter dated August 14, 1951, from S. J. Heideman, ARCo, to S. A. Gaylord, Goodyear Co. Subject: "Republic Oil Company."
- 59-A through E Letter contract dated January 1, 1950, from Goodyear, Inc., to Shell Oil Company, New York, New York, enclosing Exhibit A.

- 18 60-A through C Goodyear intra-company memo dated November 6, 1951, from R. G. Miller, to J. A. Bailey, Subject: "The Shamrock Oil & Gas Corporation, Amarillo, Texas."
- 61-A through G Document entitled "Outline of Discussion, The Shamrock Oil & Gas Corporation," dated November 27, 1951.
- 62-A through E Letter contract dated March 11, 1952, from Goodyear, Inc., to The Shamrock Oil and Gas Corporation, with Exhibit A.
- 63 Letter dated August 29, 1952, from Leo J. Wilmeth, Shamrock, to R. G. Miller, Goodyear.
- 64-A through E Letter contract dated September 5, 1952, Goodyear, Inc., to Carter Oil Company, Denver, Colorado, with Exhibit A attached.
- 65-A through C Intra-company memo dated September 5, 1952, from S. A. Gaylord, Goodyear, Inc., to certain named Goodyear personnel. Subject: "The Carter Oil Company."
- 66-A through L Copy of the "Carter Dealer", Special Goodyear Edition, December, 1952, published by Carter Oil Company.
- 19 67-A and B Unsigned letter contract, 7-14-37, between Goodyear, Inc. (R. S. Wilson) and Sherwood Brothers, Inc.
- 68-A and B Letter contract, 3-1-44, between Goodyear, Inc., and Sherwood Brothers, Incorporated, Baltimore, Md.
- 69-A through C Letter contract, 9-25-44, between Goodyear, Inc., and Sinclair Refining Company, New York, N. Y.
- 70-A through C Amendment of 10-1-47 to agreement of 9-25-44 between Goodyear, Inc., and Sinclair Refining Company.

- 71-A through D Letter agreement, 5-1-52, Goodyear, Inc., with Mid-Continent Petroleum Corp., Tulsa, Oklahoma, with Exhibit A attached.
- 72 Letter 1-15-52, Victor Holt, Jr., Goodyear, Inc., to T. E. Fitzgerald, Mid-Continent Petroleum Corporation.
- 73-A and B Letters 6-20-53, C. R. Mitchell, Goodyear, Inc., to W. J. Wixson, Mid-Continent Petroleum Corp. Subject: "Mid-Continent-Goodyear, TBA Program."
- 74-A through D Letter agreement, 6-19-52, Goodyear, Inc., with the Frontier Refining Company, Denver, Colorado, with Exhibit A attached.
- 75-A and B Goodyear, Inc., intra-company letter, 6-12-52, from J. W. Basista to C. W. Thorp. Subject: "The Frontier Refining Company."
- 76 Letter, 3-5-53, from J. W. Basista, Goodyear, Inc., to Claude A. Weber, The Frontier Refining Company.
- 77-A through D Letter agreement, 1-1-53, Goodyear, Inc., with Quaker State Oil Refining Corp., Sterling Oil Division, St. Mary's, West Virginia, with Exhibit A attached.
- 78-A and B Unsigned and undated memorandum entitled "Carter Oil Company TBA Sales Potential."
- 79 Reserved.
- 80 Reserved.
- 81-A through F Organization charts dated 5-3-49, 6-27-52, 2-12-54, 11-16-54, 11-4-55, and 9-15-56, for ARCo Domestic Sales Department.
- 82-A through C Outline maps of ARCo marketing regions—Philadelphia—New Jersey Region, New York Region; New England Region.
- 83-A through C Outline maps ARCo Marketing Regions—Western Pennsylvania Region; Eastern Pennsylvania Region; Southern Region.

- 21 84-A through C Description of ARCo Domestic Marketing Regions and customer classifications, dated 8-21-52, with attachment.
- 85-A and B ARCo lease Form B-3191, 6/49.
- 86-A and B ARCo lease Form B-3191, 4-52.
- 87 ARCo Form B-3191B, 4-52, entitled "Atlantic Franchise Agreement."
- 88 ARCo Form B-3191-A, 12/48, entitled "Equipment and Apparatus Inventory—Class 2 Station."
- 89 ARCo agreement Form B-3194, 10/50.
- 90-A and B ARCo agreement Form B-3107A, 11-50.
- 91 ARCo Agreement Form B 3105, 10-50.
- 92-A and B ARCo Agreement Form B 3121, 2-51.
- 93-A through C ARCo "Commission Agreement" Form 1951.
- 94-A through D ARCo "Commission Dealer Agreement" Form (undated).
- 95-A through C ARCo Form B 3143, 4-52, entitled "Authorized Distributor's Agreement."
- 96 ARCo Agreement Form B 3119, 10-50, entitled "Authorized Distributors Agreement."
- 97 ARCo Form B-42, 6/50, entitled "Loaned Equipment Contract."
- 98-A through G ARCo contract form containing the following introductory clause in Paragraph 1.
"Atlantic hereby constitutes Distributor a representative solely for the purpose of . . ."
- 99 Form of letter dated 1-19-48, J. S. Parks, ARCo, addressed separately to Goodyear Tire & Rubber Co., U. S. Rubber Co., B. F. Goodrich Co., Firestone Tire & Rubber Co., and General Tire & Rubber Co.
- 100-A through C Memo of 8-24-48, S. J. Heideman. Subject: "Firestone Line."
- 101-A through Z-20 Document entitled "T. B. A. Study", dated May, 1949, Sales Research Section, the Atlantic Refining Co.

- 102-A through D Memo dated 8-22-49, K. M. Ford, ARCo, to T. E. Kelly, ARCo, with attachment entitled "Marketing Alternatives." And inter-office memorandum dated 8-24-49, from T. E. Kelly to D. T. Colley: Re: "TBA Marketing."
- 103 Letter 1-10-50, F. M. Neall, ARCo, to G. V. Ostrander, ARCo. Re: "TBA, Firestone Tire & Rubber Company."
- 104-A through C Letter Contract dated 3-30-1950, H. D. Tompkins, Firestone, to D. T. Colley, ARCo.
- 23 105-A and B Letter Amendment dated 1-12-54, H. D. Tompkins, Firestone, to D. T. Colley, ARCo, amending the contract dated 3-30-50.
- 106-A and B Letter dated 4-20-51, D. T. Colley, ARCo, to H. D. Tompkins, Firestone, extending territorial area of letter agreement dated 3-30-50.
- 107 ARCo inter-office letter dated 2-27-50, from F. M. Neall to D. T. Colley, re: "Firestone Tire & Rubber Company."
- 108-A through J Unsigned document dated 3-17-50 entitled "Presentation to Atlantic Personnel in Connection with the Introduction of the Firestone Commission Plan."
- 109-A through I Document entitled "Report on Meeting for the Discussion of the Firestone Commission Plan" referring to meeting March 17, Friday.
- 110 ARCo inter-office letter dated 3-21-50 to G. H. Milligan, subject: "TBA Firestone Commission Plan."
- 111 ARCo intra-company letter dated 4-11-50 to W. J. Griffiths, subject: "TBA Firestone."
- 112 Unsigned memo dated 4-20-50 entitled "Plan for
- 24 Handling Adjustments for Atlantic Dealers on Lee Tires to be Replaced with Firestone Tires."
- 113 Unsigned memo dated 4-20-50 entitled "Plan for Handling Adjustments for Atlantic Dealers on Exide Batteries to be Replaced with Firestone Batteries."

- 114-A through D ARCo memo dated 5-11-50 by G. H. Miligan, re: "TBA Firestone Commission Plan District Office Accounting Procedure."
- 115 Supplemental memo dated 7-3-50 entitled "TBA Firestone Commission Plan District Office Accounting Procedure."
- 116-A and B Letter dated 9-29-50, G. M. Elliot, Firestone, to S. J. Heideman, ARCo, with attachment.
- 117 Unsigned, undated document entitled "Firestone Commission Plan Checklist."
- 118-A and B ARCo inter-office letter dated 3-13-50 addressed to B. M. Boor, et al, re: "TBA Firestone Commission Plan for Erie, Pennsylvania District, Newark, N. J., District, Wilmington, Delaware, District."
- 119-A and B ARCo inter-office letter dated 3-17-50
25 from S. J. Heideman to D. T. Colley re: "Firestone Program."
- 120 ARCo intra-company letter dated 7-26-50 addressed to B. M. Boor, et al, re: "TB & A Equipment."
- 121-A through D Unsigned contract form dated 7-10-50, Goodyear, Inc., to ARCo with marginal notations.
- 122 Letter, 7-5-50, Goodyear, Inc., S. A. Gaylord to S. J. Heideman, ARCo.
- 123 Letter, 11-8-50, S. J. Heideman, ARCo, to S. A. Gaylord, Goodyear, Inc., re: TBA Goodyear Commission Plan.
- 124 Letter, 11-29-50, S. A. Gaylord, Goodyear, Inc., to S. J. Heideman, ARCo with marginal notations.
- 125 Letter, 12-14-50, S. J. Heideman, ARCo, to S. A. Gaylord, Goodyear Co., re: TBA Goodyear Commission Plan.
- 126-A and B Letter, 4-3-51, D. T. Colley, ARCo, to Victor Holt, Jr., Goodyear Co., extending territorial area of letter agreement of June 1, 1950.

127-A through H Unsigned memo dated 5-31-50, entitled "Atlantic Refining Company—Sales Commission."

26 128-A and B ARCo inter-office letter dated 5-10-50 addressed to F. M. Neall re: "TBA Commission Plan."

129 ARCo inter-office letter dated 5-17-50 from F. M. Neall to D. T. Colley, re: "TBA Commission Plan."

130-A through G Memorandum 6-16-50 to Accounting by S. J. Heideman re: "Goodyear TBA Bulletin #G-1" and attached memorandum entitled "Accounting Procedure in Connection with Goodyear Plan for Sale of TBA Products in Newark, N. J., District," dated 6-6-50.

131 ARCo inter-office letter dated July 26, 1950, from TBA Section to W. J. Jackson re: "Battery Charging Equipment, Newark, N. J."

132 ARCo intra-company memorandum dated 8-2-50 from R. Borden to B. M. Boor, et al.

133 ARCo inter-office letter 6-12-50, E. D. Walter to All Sales Personnel, Philadelphia and New Jersey Region, re: "TBA."

134 Undated ARCo document beginning: "Recently you have been introduced to a new plan for the marketing of Tires . . ."

135-A through C Memo entitled "Commission Plan" beginning: "In view of the contemplated adoption of the Commission Plan in one or more sales regions . . ."

136-A through E Inter-office letter dated 3-21-51 from S. J. Heideman to D. T. Colley re: "TBA Conversion to Firestone & Goodyear Programs."

137-A through E Document entitled "Duties of the Dealer Salesman" with marginal notations including date 5-16-51.

138 ARCo inter-office memo dated June 25, 1951, to F. M. Neall re: "Staff Meeting Report."

- 139-A and B ARCo inter-office memorandum bearing notation TBA, SJH, dated January 15, 1952, to A. B. Hersberger, re: "Staff Meeting Report."
- 140 ARCo intra-company letter dated May 3, 1951, from M. G. Davis to S. J. Heideman, re: "Lee Tires."
- 141 ARCo intra-company letter dated May 10, 1951, from W. C. Hoffman to M. G. Davis, re: "Lee Tires."
- 142 ARCo intra-company letter dated June 20, 1951, from M. G. Davis to W. C. Hoffman, re: "Lee Tires."
- 28 143 ARCo inter-office memo dated July 9, 1951, bearing notation TBA SJH to William Stockton re: "Goodyear & Firestone Programs."
- 144 ARCo inter-office letter dated November 13, 1951, from William Stockton to S. J. Heideman, re: "Goodyear and Firestone Programs."
- 145 ARCo inter-office letter, dated June 18, 1952, from S. J. Heideman to William Stockton re: "Credit Card Sales."
- 146-A and B ARCo memorandum entitled "Staff Meeting held 7-14-52," beginning with paragraph 4 entitled "Credit Card Policy—1953."
- 147 Excerpt from the Atlantic Refining Company Annual Report for the year ending December 31, 1951, dated March 12, 1952, pages 12-13, headed "Marketing."
- 148 ARCo inter-office letter 2-27-51, bearing notation "TBA. HKP." Addressed to E. R. Cox, Jr.
- 149 ARCo form letter dated 3-1-51, re TBA program.
- 150 ARCo form letter, 3-1-51, re "A Statement of Atlantic's TBA Policy."
- 151 Letter dated 3-26-51, from R. M. Taitt, ARCo, to C. Connell, Electric Storage Battery Company, re "A Statement of Atlantic's TBA Policy."
- 29 152 ARCo form letter to Atlantic dealers and Atlantic petroleum distributors, beginning "Here is the most important TBA news * * *."

- 153-A and B ARCo inter-office memorandum, 4-5-51, from R. M. Taitt to Noble Hall. Re: "Firestone-Goodyear Warehousing."
- 154 ARCo intra-company letter dated 1-18-51, from R. W. Reed to F. M. Neall, et al., re "1951 New York Region Sales Plan."
- 155-A through H ARCo document entitled "1951 Sales Plan, New York Region Basis."
- 156 ARCo memorandum dated January 5, 1951, entitled "Station Modelization Policy."
- 157 ARCo intra-company letter dated 2-21-51, bearing notation TBA HKP, to G. V. Ostrander, re "Goodyear Commission Plan, 1951 Sales Plan."
- 158 ARCo inter-office letter, dated 1-26-51, from J. O. Estlow to S. J. Heideman, re Proposed TBA program.
- 159 Letter dated March 28, 1951, from S. J. Heideman, ARCo to S. A. Gaylord, Goodyear Co. re "Goodyear Program Service Station Identification."
- 30 160-A through P ARCo interoffice memorandum from W. J. Jackson to W. C. Hoffman, dated June 5, 1951, entitled "Goodyear Program Station Identification."
- 161 ARCo interoffice memorandum bearing notation TBA SJH, dated July 30, 1951, to W. J. Jackson, re "Goodyear Program Atlantic Dealer Identification."
- 162 ARCo interoffice memo, dated August 20, 1951. From W. J. Jackson to F. C. Bowman, re "Goodyear Identification Dealer Locations."
- 163 Letter dated August 21, 1951, from S. J. Heideman, ARCo, to S. A. Gaylord, Goodyear Co. Re: "Goodyear Program Atlantic Station Identification."
- 164 Letter dated August 24, 1951, from J. W. Basista, Goodyear, Inc., to S. J. Heideman, ARCo. Re: "Atlantic-Goodyear Identification."

- 165 Letter dated August 29, 1951, from J. W. O'Neill, Goodyear, Inc., to S. J. Heideman, ARCo. Re: "Goodyear Program—Atlantic Station Identification," with marginal notations.
- 31 166 Letter dated October 11, 1951, from J. W. O'Neill, Goodyear, Inc., to S. J. Heideman, ARCo.
- 167 Letter dated October 15, 1951, from J. W. O'Neill, Goodyear, Inc., to S. J. Heideman, ARCo.
- 168 ARCo intra-company letter dated October 17, 1951, from W. C. Hoffman to L. K. Maisel, re "Goodyear Program Atlantic Station Identification."
- 169 ARCo intra-company letter dated October 17, 1951, W. C. Hoffman to M. G. Davis, attention T. L. Walsh, re "Goodyear Program Atlantic Station Identification."
- 170-A through F ARCo inter-office letter dated October 24, 1951, from W. C. Hoffman to W. J. Jackson, subject: "Goodyear Program Atlantic Station Identification," with attached five-page list.
- 171-A through D ARCo intra-company letter, W. C. Hoffman to M. G. Davis, attention T. L. Walsh, re "Goodyear Program Atlantic Station Identification," with attached three-page list.
- 172-A and B ARCo intra-company letter dated October 24, 1951, W. C. Hoffman to L. K. Maisel, re "Goodyear Program Atlantic Station Identification," with attached one-page list.
- 32 173 ARCo intra-company letter, dated July 17, 1951, W. C. Hoffman to M. G. Davis, et al, re "Goodyear Program Progress Report."
- 174 ARCo intra-company letter dated September 7, 1951, M. G. Davis to S. J. Heideman, re "Goodyear Program."
- 175 ARCo intra-company letter dated July 19, 1951, L. K. Maisel to S. J. Heideman, re "Goodyear Program Progress Report."

- 176 ARCo's Goodyear TBA Bulletin #17, dated April 25, 1952, entitled "Goodyear Program."
- 177 Letter dated 8-20-51, S. A. Gaylord, Goodyear, Inc., to S. J. Heideman, ARCo, re "Jennings Bros., Cranston, R. I."
- 178 Letter dated 8-24-51, W. C. Hoffman, ARCo, to S. A. Gaylord, Goodyear Co. re "Goodyear Program, Jennings Bros., Cranston, R. I."
- 179-A through I ARCo document entitled "Goodyear Program—Minutes—Goodyear TBA Coordinators' Meeting, October 12, 1951, Syracuse, New York," by W. C. Hoffman, Acting Secretary.
- 33 180 ARCo intra-company letter dated May 13, 1952, L. E. Card to S. J. Heideman, re "Purolator," including marginal notation.
- 181 Letter dated May 19, 1952, W. C. Hoffman, ARCo, to J. W. O'Neill, Goodyear Co., re "Purolator Products."
- 182 Letter dated May 29, 1952, from J. W. O'Neill, Goodyear, Inc., to W. C. Hoffman, ARCo, re "Purolator Products."
- 183 ARCo interoffice letter dated 5-1-52, from W. J. Butler to S. J. Heideman, re "Goodyear Tire Display," with marginal notation.
- 184 Document entitled "Distribution Flow Chart on Commission Plan Tires, Tubes & Batteries." Referring to Goodyear distribution.
- 185 ARCo's "Firestone TBA Bulletin #17," dated April 25, 1952, subject: "Firestone Program," by S. J. Heideman.
- 186 Letter dated July 18, 1952, G. M. Elliott, Firestone, to S. J. Heideman, ARCo.
- 187 ARCo intra-company letter dated 9-3-52, from J. O. Long to W. L. Schmidt, et al. re "Procedure: TBA Firestone."

34 Mr. Kelaher: I will now read a list of the numbers of the documents as to which neither Respondent Goodyear, Respondent Goodyear, Inc. or Respondent Atlantic, has objection:

Commission exhibits for identification 1-A through C; 2; 3; 4-A and -B; 6; 7; 8-A and B; 13-A through -E; 14; 16-A and -B; 20-A and -B; 21; 22-A and -B; 23-A and -B; 25; 26; 28-A and -B; 29; 30; 31; 35; 36; 40-A and -B; 41-A through -E; 42-A and -B; 43-A and -B; 44-A and -B; 45-A and -B; 48-A through -F; 49; 50-A and -B; 51; 52-A and -B; 54; 81-A through -F; 82-A through -C; 83-A through -C; 85-A and -B; 86-A and -B; 87; 88; 89; 90-A and -B; 91; 92-A and -B; 93-A through -C; 94-A through -D; 95-A through -C; 96; 97; 98-A through -G; 99; 104-A through -C; 105-A and -B; 106-A and -B; 121-A through -D; 122; 123; 124; 125; 126-A and -B; 147; 148; 149; 150; 151; 152; 158; 176; 180; 181; 182; 183; and 184.

As to the documents referred to, I move that they be offered in evidence.

Hearing Examiner Kolb: Is there any objection?

Mr. Mason: No objection.

Mr. Ballard: No.

Hearing Examiner Kolb: There being no objection, the exhibits marked for identification and just enumerated will be received in evidence.

35 (The documents referred to, heretofore marked for identification, are received in evidence as COMMISSION'S EXHIBITS 1-A through -C; 2; 3; 4-A and -B; 6; 7; 8-A and -B; 12; 13-A through -E; 14; 16-A and -B; 20-A and -B; 21; 22-A and -B; 23-A and -B; 25; 26; 28-A and -B; 29; 30; 31; 35; 36; 40-A and -B; 41-A through -E; 42-A and -B; 43-A and -B; 44-A and -B; 45-A and -B; 48-A through -F; 49; 50-A and -B; 51; 52-A and -B; 54; 81-A through -F; 82-A through -C; 83-A through -C; 85-A

and -B; 86-A and -B; 87; 88; 89; 90-A and -B; 91; 92-A and -B; 93-A through -C; 94-A through -D; 95-A through -C; 96; 97; 98-A through -G; 99; 104-A through -C; 105-A and -B; 106-A and -B; 121-A through -D; 122; 123; 124; 125; 126-A and -B; 147; 148; 149; 150; 151; 152; 158; 176; 180; 181; 182; 183; and 184.)

Mr. Kelaher: There was a second list of documents to which Goodyear has no objection, and by Goodyear I refer to Goodyear Company and Goodyear Inc., but which are tentatively objected to by Atlantic and upon which we request the Examiner to defer ruling. In other words, they will not be offered into evidence at this time. They are: Commission's exhibits for identification 5-A, -B; 15-A, -B; 18-A, -B; 24-A through -G; and 27.

Hearing Examiner Kolb: These documents were marked for identification but are not being offered, is that it?
36 Mr. Kelaher: That is correct. There is a tentative objection by Respondent Atlantic which may be resolved during the course of conferences on the stipulation as to the facts.

The next list refers to documents marked for identification as Commission's exhibits to which Respondent Atlantic has no objection, but as to which there is a tentative objection by Respondent Goodyear, Inc. Commission's exhibits for identification number 64-A through -E; 84-A through -C; 102-A through -D; 128-A and -B; 129; 131; 133; 136-A through -E; 153-A and -B; 154; 157; and 179-A through -I. The documents enumerated are not being offered in evidence at this time.

The next list of Commission's exhibits for identification relate to documents which require further consideration by Respondents but as to which no objection will ultimately be made as to their introduction into evidence. Is that correct?

Mr. Mason: I think that the way we should state that

is that as to some of these documents we are not clear that some further explanatory material would not be necessary. We probably will be able to eliminate that kind of thing in the course of our stipulation, so we will then probably remove any objection. I don't want to have the understanding at this time that all objections will be removed though.

Mr. Kelaher: With that explanation by counsel for the Respondents, I will proceed to enumerate the documents in this particular category: Commission's exhibits for 37 identification 9-A through -E; 10-A through -E; 11-A and -B; 17-A and -B; 19; 32; 33; 34-A through -D; 37; 38; 39; 46-A and -B; 47-A and -B; 56; 57; 58; 101-A through Z-20; 117; 127-A through -H; 130-A through -G; 132; 134; 135-A through -C; 137-A through -E; 138; 139-A and -B; 140; 141; 142; 143; 144; 145; 146-A and -B; 155-A through -H; 156; 159; 160-A and through -P; 161 through 169, both inclusive; 170-A through -F; 171-A through -D; 172-A and -B; 173; 174; 175; 177; and 178.

The documents just enumerated are not at this time being offered into evidence.

There are two remaining categories, the first of which concerns documents as to which all Respondents object on the grounds that they include references to the Firestone Tire and Rubber Company. Such documents are Commission's exhibits for identification number 100-A through -C; 103; 107; 108-A through -J; 109-A through -I; 110; 111; 112; 113; 114-A through -D; 115; 116-A and -B; 117—and I might add that 117 is also objected to on other grounds and was included in the prior list—118-A and -B; 119-A and -B; 120; 135-A through -C; 153-A and -B, which also was included in a prior list.

Mr. Ballard: A portion of that document only.

Mr. Kelaher: A portion of that document only, 153.

Mr. Mason: Yes.

Mr. Ballard: That is, the portion relating to Firestone.

38 Mr. Kelaher: (Continuing.) —185; 186; and 187.

I will withhold offering those documents temporarily until I complete the list.

Mr. Mason: If your Honor please, I would like the record at this point to show that Mr. Kelaher is correct in saying that we have the common objection that these are Firestone documents as to each of them. That is not to say, however, that there may not be some other objection specific to one or more of the documents. I just don't want to waive other objections at this point. I believe all of them, however, have the Firestone objection.

Mr. Kelaher: The remaining list relates to oil companies, which have contracts with Respondent Goodyear, Inc. as to which objection is made by all respondents, subject, I presume, also to the statement just made by Mr. Mason.

Mr. Mason: That is correct.

Mr. Kelaher: Commission's exhibits for identification numbers 53; 55; 59-A through -E; 60-A through -C; 61-A through -G; 62-A through -E; 63; 64-A through -E; 65-A through -C; 66-A through -L; 67-A and -B; 68-A and -B; 69-A and -C; 70-A through -C; 71-A through -D; 72; 73-A and -B; 74-A through -D; 75-A and -B; 76; 77-A through -D; and 78-A and -B.

Your Honor, may we go off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

39 Mr. Kelaher: Your Honor, at this time I would like to offer in to evidence Commission's exhibits for identification which have been classified as to which respondents object, either in whole or in part because reference is made to the Firestone Tire and Rubber Company which is not named as a respondent in this case but which is

referred to in the complaint as having an overriding sales commission agreement with respondent Atlantic.

Those documents, for the purpose of record are these Commission exhibits for identification numbers 103.

Hearing Examiner Kolb: 100 A-C and 103. Did I hear you wrong?

Mr. Kelaher: I'm sorry, 100 A-C, 103, 107 through 120, 135 A-C, 153 A-B, and 185, 186 and 187. Before the ruling is made on the admissibility of such documents I beg leave of the Examiner to be heard on the question of their admissibility.

Hearing Examiner Kolb. I assume that they will object. What their objections are they have a right to answer. Do you offer those exhibits now?

Mr. Kelaher: Yes, sir.

Hearing Examiner Kolb: Do you want to state your objections?

Mr. Mason: We believe, your Honor, that these documents are in the same category of documents that were embraced in your Honor's ruling in the case involving Texas and Goodrich and Firestone. That is that

Firestone is not a respondent to the case that any detail of evidence with respect to the arrangement in Firestone has nothing to do with Goodyear in the case particularly and that it is outside of the scope of the complaint.

We have acquiesced in your Honor's ruling in the Texas-Goodrich case that evidence as to the contracts themselves and as to the basic statistics as to sales may go in but we have objected and registered our objections to those documents which set forth the detail of the Firestone plan and I am speaking now to my objection from the Goodyear people.

Mr. Ballard: Speaking for Atlantic, your Honor, I can add to Mr. Mason's statement, the fact is that Firestone is not a party, that the relationship between Firestone

and Atlantic seems far alien to the relationship between Goodyear and Atlantic and we feel that evidence directed to the details of relationship between Firestone and Atlantic are a needless cluttering of the record and can lead only to confusion in your Honor's consideration of the issues before him which relate to another relationship and we also are prepared to acquiesce in the ruling in the Goodrich-Texas Company proceedings and in fact have in our admissions admitted the existence and general similarity of the Firestone-Atlantic contract and the size of the sales reported thereunder by Firestone and the size of the commissions paid thereunder.

41 Mr. Kelaher: Mr. Examiner, before I take each of the objections seriatim, I would like to review the complaint for the purpose of showing that these questioned documents are relevant to and come within the scope of the complaint.

The complaint alleges that the sales commission agreement and the acts and practices thereunder between Atlantic and Goodyear are unlawful. The complaint also alleges in paragraph 7 thereof that Atlantic has entered into a "substantially similar agreement", which counsel for respondents have just acknowledged, with Firestone, and that the agreement and the acts and practices thereunder are unlawful as set forth in paragraphs 11 and 12 of the complaint.

I would refer you to paragraph 11, subparagraph 2, which specifically states that among the effects of the adoption and use by respondents of said override commission agreement and each of them under the circumstances and in the manner here and as before alleged are that they have, as stated in subparagraph 2, "injured, lessened, prevented and destroyed competition between Goodyear, Inc., and Firestone."

If permitted, we propose to show documents which will

substantiate that allegation of the complaint. Those documents will show that the Atlantic Refining Company has six marketing regions, three of which are designated as the New York Region, the New England Region, and the Philadelphia-New Jersey Region.

Three other Regions are described by Atlantic as 42 the Western Pennsylvania Region, the Eastern Pennsylvania Region, and the Southern Region. We propose to show that the sales commission plan agreements referred to in this complaint are market foreclosure devices. They are market devices which not only eliminate, they atomize competition. If permitted, we will show that Atlantic after exploring possible marketing alternatives actually assigned three marketing regions to Goodyear, namely the New York, New England and Philadelphia-New Jersey Regions, and actually assigned three Regions to Firestone, namely the Western Pennsylvania, Eastern Pennsylvania, and Southern Regions, both agreements to become effective simultaneously on March 1, 1951.

It is our contention that the control and influence which Atlantic has in this market is reflected in the manner in which they assign markets, and we contend that this plan, this sales commission plan, is simply that, is strictly a market control plan. We are not concerned here primarily with contracts between Atlantic and Goodyear. We are concerned here primarily with the dominant position of Atlantic Refining Company in this market, and I would stress the point by stating that the Firestone contract, the Firestone statistics, and the Firestone mechanics, the operational mechanics of the Firestone plan will prove beyond a shadow of a doubt one important element of this case, and it is relevant to the Goodyear contract from that standpoint, and that important fact is that these tire 43 companies, Goodyear and Firestone, have actually entered into contracts in restraint of trade through the

instrumentality of the Atlantic Refining Company, which are patently violations of Section 1 of the Sherman Act which bring them within the purview of Section 5 of the Federal Trade Commission Act.

That is the allegation we intend to substantiate and we feel we are severely restricted and hampered in our offers of proof and in our documentary proof if we are not permitted to introduce such evidence.

I would like to take the objections made seriatim by first Goodyear. They say Firestone is not a respondent. Well, that is true, Firestone is not a respondent, but it isn't necessary that Firestone be a respondent. This is a complaint in the public interest. The Commission has seen fit to attack this problem through this type of a complaint. It is for the protection of public rights. We are here interested in the elimination of trade restraints for eliminating the preservation of competition in the interests of the public. We are not interested in private rights. The Commission often has cases which transgress public rights and therefore contracts are abrogated or ruled invalid by the Federal Trade Commission and the courts. I refer your Honor to the National Licorice case 309 U. S. 350, where the Supreme Court stated that in proceedings before the Federal Trade Commission, the order restraining 44 unfair methods of competition may preclude the performance of outstanding contracts by the offender. Such orders have never been challenged because the owners of the contracts were not made parties, and that is exactly the situation in this case.

In addition to the fact that the Firestone contract and the actual practices thereunder including the entire plan eliminates competition, and that is another thing I would like to mention, it is true that the motivating force of this plan lies in the contracts. It sounds in contract to that extent. However, once the dealer is signed, once the At-

Atlantic dealer is signed to a Firestone contract, or once he has signed a Goodyear contract, other trade restraints raise their ugly head. This plan is simply saturated with trade restraints, and we feel that we should have an opportunity to present evidence to substantiate that statement. For example, once an Atlantic dealer is signed to a Goodyear contract, and the same thing applies to the Firestone contract, the Atlantic dealer is told where he must buy his supplies, his Goodyear supplies or Firestone supplies. He can't go to any Goodyear dealer, even to a Goodyear dealer in the area or even to a Firestone dealer in the area, he must go to the designated supply point. This plan has all types of ramifications over and above the contracts themselves, and the contracts are very innocuous.

There is one preliminary contract entered into by Atlantic and Goodyear which is dated in June, 1950, and it took 45 them six months to work out the terms of the contract.

These contracts are very innocuous in their meaning; and we have proof of that statement. Those documents are already in evidence to show that. So that takes

46 care of the first point. Coming back again to Goodyear's objections we state it isn't necessary for Firestone to be named as a respondent.

The second objection by the Counsel for Goodyear was that the detailed arrangements have no bearing on the Goodyear-Atlantic plan. I think that I have covered that subject thoroughly. We say that the detailed arrangements between Firestone and Atlantic do have an essential bearing on the Goodyear-Atlantic plan. There is no question about it. If it weren't for Atlantic's command of the market the Goodyear plan would not be in effect today, and I would like to add at this point that the contracts I am referring to between Goodyear and Atlantic and between Firestone and Atlantic were entered into as of March 1, 1951, and to this date there has been a complete elimination

of competition between Goodyear and Firestone in attempts to sell the entire Atlantic market.

Firestone sells in areas in the New York area, Firestone sells in the New England area and Firestone sells in the Philadelphia-New Jersey area, but they do not sell to Atlantic stations in those areas. There is a hands-off policy and we can prove it and likewise Goodyear since 1951 sells in the Western Pennsylvania area, they sell in the Eastern Pennsylvania area, they sell in the Southern area, but they do not sell to Atlantic stations in those areas because there is a common understanding and an agree-
47 ment that Firestone has been assigned those areas.

Now we are not saying that this is a conspiracy case although it has all the elements of a conspiracy case, but we do think it is important to show that Atlantic has domination and control of the market. That is an essential and vital part of our case.

Now going down through other objections by Counsel for Goodyear he stated that he would acquiesce as to the contracts themselves and as to the statistics. Of course, that in and of itself shows nothing. As I stated the contract is very innocuous. The statistics taken as a whole are meaningless. We can't show; we are prohibited if our documents don't go in, we are prohibited from showing how this program operates and its effect on the Goodyear-Atlantic plan.

His further objection and his last objection was to the mechanics of the Firestone plan. Well, as I have just stated the trade restraints in this case are barely underway by the time the mechanics of this plan go into effect. There are all types of trade restraints involved here and we think we should have an opportunity to show how this plan works.

Now as to Counsel for respondent Atlantic, who has raised similar objections. First he states that respondent

Firestone is not a respondent. I believe I have answered that contention. He states secondly that the relations between Firestone and Atlantic are foreign and alien to 48 the Goodyear-Atlantic contract.

I think we have shown that they are not foreign and alien, they are an inseparable part of the Goodyear-Atlantic contract.

Third, it would lead to confusion. Of course I don't think I have to comment on that one. His fourth statement was that he acquiesced as to the contracts themselves and as to the statistics, and there again I say that it is not enough for our purposes. So on the basis of this statement I move the documents referred to be admitted in evidence.

Hearing Examiner Kolb: Mr. Kelaher, your chief objection as I understand it is an inability to show that there has been a division of territory.

Mr. Kelaher: It is our inability to show the dominance.

Hearing Examiner Kolb: I can't see how a ruling which I have made in the other case would prohibit you from showing a division of the territory, that Goodyear could not sell except in certain states.

Mr. Kelaher: Well, as we understand your ruling on the other case, and I am very happy to have that ruling clarified for the purpose of this case, I am assuming that that type of testimony would have been excluded. I would be very happy—

Hearing Examiner Kolb: I couldn't exclude testimony as to where Goodyear sells.

Mr. Kelaher: There is an exclusion of testimony 49 as to—referring now to the Goodrich-Texas Company case.

Hearing Examiner Kolb: I say if I follow the same ruling you would still be able in this case to show the territory or extent of the territory in which Goodyear sold and the division of the territory.

Mr. Kelaheer: Yes, but we wouldn't be able to implement our allegation that competition has been eliminated. We have documentary proof going in to that question.

Hearing Examiner Kolb: The thing that bothers me is that you appear to be proceeding on a conspiracy case without pleading a conspiracy.

Mr. Kelaheer: I tried to make it perfectly clear, Your Honor, that we are not proceeding on a conspiracy case. I simply make the statement that both contracts and the acts and practices under both contracts are essential to show the market domination and influence of Atlantic.

Atlantic simply assigns these areas to these people. We are attacking this sales commission plan. We say it is a market control device. It so happens that Goodyear is in now and Firestone is in. Tomorrow Atlantic may decide to put two other companies in there and we intend to show that they have that power.

Hearing Examiner Kolb: If Atlantic makes a contract with Firestone to sell in certain states and makes a contract with Goodyear to sell in certain states—

50 Mr. Kelaheer: That is right.

Hearing Examiner Kolb: (Continuing.) —and you have no agreement among the three of them that the territory is being divided how are you going to prove a case against Goodyear by using Firestone?

Mr. Kelaheer: We are going to show, as we allege in the complaint, that the sales commission plan was entered into by Goodyear with the understanding that it was assigned three territories. We are going to show, if we are permitted, we have documentary proof of the fact that Goodyear does not go into the Firestone areas and vice versa. We say it is pertinent to show that the sales commission plan is a market control device.

It has a direct bearing on the Goodyear plan. One plan can't exist without the other. If this were not a market

control device Firestone would be competing with Goodyear in the Goodyear territory and vice versa but they are not doing that.

Hearing Examiner Kolb: Do you have anything further to say?

Mr. Mason: No, Your Honor, except to say this, I think that Your Honor, in knowing the fact that this is not a conspiracy case, that there are not allegations of a division of territories between the three parties, has put your finger on the very nub of the problem here. The extent to which these people, the attorneys supporting the complaint, 51 would like to go into details of transactions with strangers so far as Goodyear is concerned is just going to completely confuse the case and take it out of what at least we understand it to be, an allegation that Goodyear and Atlantic together have participated in an unfair trade practice and that it is togetherness of their participation that makes this unfair trade practice.

Mr. Kelaher: The complaint also alleges, I might add, that Firestone and Atlantic are engaged in a similar unfair trade practice and one is part and parcel of the other.

Hearing Examiner Kolb: Would you consider this evidence as to Firestone to be admissible against Atlantic but not to Goodyear?

Mr. Kelaher: I would go that far. I think it is definitely admissible against Atlantic. I don't think there is any question about it being admissible against Atlantic.

Hearing Examiner Kolb: Where would you be if it was one and not the other?

Mr. Kelaher: It would show that the sales commission plan is what we claim it is. It is a market control plan. I think when you ask me whether I would hold it admissible against Goodyear it makes little difference whether it is admissible against Goodyear if the ultimate fact is found, namely that this is a market control device. It is a market

allocation device. It is a customer allocation device. That is what we are attempting to reach in these cases.

52 I think it could be stated that it would be admissible against Atlantic and even with that limited applicability I think it would aid our presentation of the evidence. However, I would like to discuss that for a moment.

Hearing Examiner Kolb: I feel this way, this question has been raised and it is before the Commission now in the Goodrich case. If you feel that there is enough difference between this case and the Goodrich case to take it out of here perhaps the best way for me to do would be to refuse the acceptance of these documents and let you take another appeal at the same time, let them both be argued together.

Mr. Kelaher: We do contend, leave there be no misunderstanding on this point, that the basic issues are the same but we do think we have presented enough differences to show that the evidence we are referring to in this particular case would be admissible.

Hearing Examiner Kolb: I did have in mind deferring my decision until the Commission had acted upon the other appeal. However, if you wish to appeal this on that ground as well I can today sustain the objections and you can take your appeal to the Commission on this if you wish to do that. Whichever you wish.

Mr. Kelaher: Well, I would appreciate a ruling on the matter.

53 Hearing Examiner Kolb: All right then. Let the record show that the objections to the exhibits which were enumerated as applying to Firestone are sustained.

Mr. Kelaher: May we have a five minute recess.

Hearing Examiner Kolb: Five minute recess.

(Thereupon, a short recess was taken.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: Mr. Examiner, for purposes of the record, we would appreciate an amplification of your ruling as it pertains to this matter if you so desire.

Hearing Examiner Kolb: I don't see that any amplification should be made really. The matter is before the Commission in the other case and I would like to see what the Commission does about it before I do anything as a matter of fact. I am giving you an opportunity to appeal this ruling if you feel the division of territory has any bearing on it. I sustained the objection so that you could take your appeal at the same time with the Goodrich matter and have them both disposed of with the Commission.

Mr. Kelaher: I take it from your statement your ruling in this matter is based on your rulings in docket 6485.

Hearing Examiner Kolb: There is no use in me making another ruling in the thing.

Mr. Kelaher: Thank you, Your Honor. There was another category of documents marked for identification, they being documents which relate to or incorporate, 54 they are in references to oil companies which have sales commission plan agreements with respondent Goodyear, Incorporated.

I ask now what your ruling would be with respect to such documents which I now offer in evidence.

Mr. Mason: Your Honor, we object to the introduction of these documents in evidence, objection that they present precisely the same issues that were raised as to non-respondent oil companies in the Texas-Goodrich cases and because the issues are identical I will not engage in any extended argument in support of my objection.

Hearing Examiner Kolb: As I stated before, I might have some doubt as to Firestone but I have no doubt as to the inadmissibility of documents with reference to oil companies so I will sustain the objections to Exhibits 53, 55, 59 through 78.

Mr. Kelaher: I take it here again that your ruling is based on similar rulings in docket 6485.

Hearing Examiner Kolb: The matter is before the Commission and so I am leaving it before the Commission with the opportunity to appeal if you wish in this proceeding.

Mr. Kelaher: Thank you, Your Honor. I think that concludes the subjects as to which we had intended to discuss this afternoon. I leave it to Counsel for respondents whether or not there is anything further at this time.

Mr. Mason: We have no further business for Your Honor.

55 Mr. Kelaher: One more thing, Your Honor, for the record.

(Discussion off the record.)

Hearing Examiner Kolb: As a result of discussions off the record it was decided to have no further hearings until the Commission has decided the appeal and I am accordingly cancelling the hearings now set for November 7, 8, and 9, and November 12, 13, and 14, and resetting this matter for December 3 through December 7.

Mr. Kelaher: Your Honor, I would like to state that prior to the December 3 hearings Counsel for the respondent and Counsel for the complaint will attempt to resolve by stipulation the type of testimony elicited from top level officials in docket 6485.

Mr. Mason: We will do that.

Hearing Examiner Kolb: I have no objection to expediting the case any way you can.

Mr. Kelaher: Thank you.

Hearing Examiner Kolb: I guess that is all in this case.

57 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: Mr. Examiner, at our last hearing we had

a number of exhibits marked for identification as shown on the transcript at pages 10 through 33 inclusive. Of that group certain documents were introduced into the record without objection by counsel for respondent Goodyear or respondent Atlantic. That list appears at page 34 of the transcript. Those documents were received into evidence as appears at page 35 of the transcript.

There were certain other documents which were not offered into evidence at that time. Since the last hearing conferences have been held with counsel for respondents and we now have another list of documents as to which counsel for respondents, Atlantic and Goodyear, offer no objection, and at this time I would like to offer them into evidence.

They are: Commission Exhibits for identification 9-A through E inclusive; 17-A and B; 19; 37; 38; 39, and let the record show that Commission Exhibit for identification No. 39 was an enclosure to Commission Exhibit for identification No. 37; 47-A and B, and let the record show that this copy of this document was found or obtained from the files of respondent Goodyear; 127-A through H inclusive; 159; 160-A through P inclusive, and let the record show that a copy thereof was forwarded to respondent Goodyear; 163; 164; 165; 166; 167; 177; and 178.

I now offer such documents in evidence.

Mr. Mason: No objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: There being no objection the documents will be received in evidence as Commission's Exhibits 9-A through E inclusive; 17-A and B; 19; 37; 38; 39; 47-A and B; 127-A through H inclusive; 159; 160-A through P inclusive; 163; 164; 165; 166; 167; 177; and 178.

(The documents referred to, heretofore marked for identification COMMISSION'S EXHIBITS 9-A through E inclusive; 17-A and B; 19; 37; 38; 39; 47-A and B; 127-A

through H inclusive; 159; 160-A through P inclusive; 163; 164; 165; 166; 167; 177; and 178 were received in evidence.)

Mr. Kelaher: Your Honor, there is a group of documents which have been marked as Commission exhibits for identification numbering about ten as to which no objection has been raised by Goodyear but as to which Atlantic Refining Company indicates that it may object. In order to expedite the proceedings I will offer the first of these into evidence.

I now offer Commission Exhibit for identification 5-A and B into evidence. This document is a memorandum dated August 29, 1949 from S. A. Gaylord, Goodyear, 59 Inc., to Messrs. Mayl and other Goodyear personnel in re: "Atlantic Refining."

Mr. Ballard: Objection.

Hearing Examiner Kolb: What is the nature of the objection?

Mr. Ballard: Our objection to that is this is simply an internal document of the Goodyear Company; there is no showing nor even any claim that it was communicated to Atlantic Refining or by the Atlantic Refining and because of that we object to its being entered as against Atlantic or ~~United~~ ^{Refining} Atlantic. This is one of a group and we will have the same objection to the entire group all of which are from the Goodyear files and do not appear to have been communicated to the Atlantic or Atlantic Refining Companies.

Hearing Examiner Kolb: Do they ~~appear~~ ^{appear} in the Goodyear file?

Mr. Kelaher: Yes, sir; there is no objection to their admissibility on the part of respondent Goodyear. The only objection raised is the lack of knowledge on the part of respondent Atlantic. However, they specifically refer to the Atlantic-Goodyear sales commission plan.

(The document was handed to the Examiner.)

Hearing Examiner Kolb: This is an inter-office communication?

Mr. Kelahe: Yes, your Honor.

60 Hearing Examiner Kolb: Inter-office communication of Goodyear?

Mr. Kelahe: Yes, sir.

Hearing Examiner Kolb: The document will be received subject to the motion to strike of Atlantic.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 5-A and B, was received in evidence.)

Mr. Kelahe: I now offer into evidence nine other documents which fall into the same category as Commission's Exhibit 5-A and B, and are subject to the same objection by Atlantic counsel and are also, I would think, subject to the same ruling by your Honor.

They are Commission Exhibits for identification 11-A and B; 15-A and B; 18-A and B; 24-A through G inclusive; 27; 32; and let the record show that L. A. Knight, named therein is an employee of the Auto-Lite Battery Corporation; 33; 34-A through D inclusive; and 46-A and B.

Mr. Mason: Goodyear has an objection.

Mr. Ballard: Your Honor, those documents are in the same classification as 5-A and B; they are all Goodyear inter-office or intra-company documents found in the Goodyear files and for that reason I have the same objection.

Hearing Examiner Kolb: They will be received under the same ruling subject to a motion to strike of
61 Atlantic. That applies to Exhibit 11-A and B; 15-A and B; 18-A and B; 24-A to G inclusive; 27; 32; 33; 34-A to D inclusive; 46-A and B inclusive.

(The documents referred to, heretofore marked for identification COMMISSION'S EXHIBITS 11-A and B, 15-A and B, 18-A and B, 24-A through G inclusive, 27, 32, 33, 34-A through D inclusive, and 46-A and B, were received in evidence.)

Mr. Ballard: Your Honor, may I correct one statement that I made? I doubt that it is going to change any results. It appears that Exhibit 32 is not an inter-office communication of the Goodyear Company, it is an inter-office communication of the Auto-Lite Company of which a copy was found in the Goodyear file and the objection is the same.

Hearing Examiner Kolb: Same ruling.

Mr. Kelaher: That is correct, your Honor. May we go off the record a minute, please?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: Your Honor, we have another category of documents marked for identification which were found in the files of Atlantic Refining Company and as to which Atlantic interposes no objection but counsel for respondent Goodyear does.

62 At this time I would like to offer into evidence Commission Exhibits for identification 84-A to C inclusive; 102-A through D inclusive; 128-A and B; 129; 130-A through G; 131; 132; 133; 136-A to E inclusive; 137-A to E inclusive; 138; 140; 141; 142; 143; 144; 145; 146-A and B; 154; 155-A through H inclusive; 157; 161 162; 168; 169; 170-A through F inclusive; 171-A through D inclusive; 172-A and B; 173; 174; 175; 179-A through I.

I now offer the foregoing exhibits into evidence.

Mr. Ballard: Your Honor, Atlantic has no objection provided the record will show with respect to Exhibit 137 A-E that Atlantic does not admit that—let me say that document is entitled “Duties of the Dealer-Salesmen.” Atlantic does not admit that that document was ever officially accepted, promulgated or used by Atlantic. As a matter of fact, sir, we don’t know exactly who made it or for what purpose, but it was never adopted or promulgated as an official description of the duties of the dealer-salesmen by

the company. If the record will show that we are not admitting that then we have no objection to its admission into evidence.

Hearing Examiner Kolb: It came from Atlantic files?

Mr. Balard: Yes, sir; it did. We have no doubt that it was made by someone in Atlantic and to that degree it is authentic, but it's not a company document.

63 Hearing Examiner Kolb: All right.

Mr. Mason: Your Honor, our objection here is the same objection that was made by Atlantic when the situation was reversed. These are internal documents found in the files of Atlantic. Goodyear had no notice and therefore, we object to them as lacking competency as evidence against Goodyear.

Hearing Examiner Kolb: The documents enumerated will be received into evidence subject to the motion to strike on the part of Goodyear Tire and Rubber Company.

(The documents referred to, heretofore marked for identification COMMISSION'S EXHIBITS 84-A through C inclusive, 102-A through D inclusive, 128-A and B, 129, 130-A through G inclusive, 131, 132, 133, 136-A through E inclusive, 137-A through E inclusive, 138, 140, 141, 142, 143, 144, 145, 146-A and B, 154, 155-A through H inclusive, 157, 161, 162, 168, 169, 170-A through F inclusive, 171-A through D inclusive, 172-A and B, 173, 174, 175, 179-A through I inclusive, were received in evidence.)

Mr. Kelaher: At this time I offer into evidence Commission's Exhibit for identification numbers 56, 57, and 58.

Mr. Ballard: With respect to Exhibit 56, your Honor, Atlantic has the same objection that we registered
64 before, namely, that it is an internal document of the Goodyear Company found in the Goodyear files. In fact, all three of these were found in the Goodyear files, but 57 and 58 were addressed to and received by Atlantic.

Exhibit 56 is an internal Goodyear document and we object to it as against Atlantic.

Hearing Examiner Kolb: Exhibit 58 is not, is it?

Mr. Kelaher: Exhibit 58 is a communication from Atlantic Refining Company to Goodyear.

Mr. Ballard: Exhibits 57 and 58 are between the two respondents, they were actually found, however, in the Goodyear files, but we don't object to either 57 or 58.

Hearing Examiner Kolb: You are just objecting to 56?

Mr. Ballard: Yes, sir; and simply because it's an internal document and not binding on us.

Hearing Examiner Kolb: The document 56 will be received into evidence subject to a motion to strike on the part of Atlantic.

Documents 57 and 58 will be received in evidence.

(The documents referred to, heretofore marked for identification COMMISSION'S EXHIBITS 56, 57 and 58, were received in evidence.)

Mr. Kelaher: Your Honor, the next group of documents relate to the sales commission plan between Atlantic Refining Company and the Firestone Tire and Rubber Company. These documents were offered into evidence at the last hearing and a ruling was made thereon, after objection by counsel for respondents. An appeal was made from that ruling to the Commission and these documents come within the category of exhibits offered into evidence subject to that ruling. The list consists of Commission exhibits for identification 100-A through C inclusive; 103; 107; 108-A through J inclusive; 109-A through I inclusive; 110; 111; 112; 113; 114-A through D inclusive; 115; 116-A and B; 117; 118-A and B; 119-A and B; 120; 135-A through C inclusive; 153-A and B; 185; 186; and 187. These documents are now offered into evidence, your Honor.

Mr. Mason: If your Honor please, we wish to preserve our objection as to these documents because they do relate

to Firestone. I understand they are within the scope of the ruling that the Commission had on that matter, but in addition we object to these documents because they are internal documents, that is, documents found in Atlantic files and documents in which Goodyear had no knowledge, so we press competency objection so far as Goodyear is concerned as to these documents.

Mr. Ballard: Your Honor, we wish, of course, to preserve our position with respect to the ruling which your Honor made and the Commission overruled and we 66 don't want to sacrifice that by letting in anyway and we will press it on appeal or otherwise, but we recognize that these documents are within the scope of the Commission's ruling.

Hearing Examiner Kolb: In compliance with the Commission's ruling the documents enumerated will be received into evidence subject to the motion to strike on the part of Goodyear.

(The documents referred to, heretofore marked for identification COMMISSION'S EXHIBITS 100-A through C inclusive, 103, 107, 108-A through J inclusive, 109-A through I inclusive, 110, 111, 112, 113, 114-A through D inclusive, 115, 116-A through B, 117, 118-A and B, 119-A and B, 120, 135-A through C inclusive, 153-A and B, 185, 186, 187, were received in evidence.)

Mr. Kelaher: Off the record, please.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: Your Honor, the next category of documents were previously offered into evidence and relate to the sales commission plan between respondent Goodyear and certain other oil companies. They also are subject to the Commission's ruling with respect to such documents.

The Commission's ruling that I am referring to is their Order issued December 5, 1956.

67 The list of documents are identified as Commission's Exhibits for identification numbers 53; 55; 59-A through E inclusive; 60-A through C inclusive; 61-A through G inclusive; 62-A through E inclusive; 63; 64-A through E inclusive; 65-A through C inclusive; 66-A through L inclusive; 67-A and B; 68-A and B; 69-A through C inclusive; 70-A through C inclusive; 71-A through D inclusive; 72; 73-A and B; 74-A through D inclusive; 75-A and B; 76; 77-A through D inclusive; and 78-A and B.

We now offer these documents into evidence, your Honor.

Mr. Ballard: Your Honor, on behalf of Atlantic particularly we recognize that these are the documents covered by the Commission's ruling, we press for the record the objection that they were found in the Goodyear files and are not binding on or are competent against Atlantic.

Mr. Mason: Goodyear has the same objection as was made to, I think a prior attempt to introduce these documents into evidence and just wishes to preserve its position and objects to their admissibility.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

The objection of Goodyear will be overruled and in accordance with the Commission's ruling on appeal the 68 documents will be received into evidence subject to motion to strike by Atlantic.

(The documents referred to, heretofore marked for identification COMMISSION'S EXHIBITS 53, 55, 59-A through E inclusive, 60-A through C inclusive, 61-A through G inclusive, 62-A through E inclusive, 63, 64-A through E inclusive, 65-A through C inclusive, 66-A

through L inclusive, 67-A and B, 68-A and B, 69-A through C inclusive, 70-A through C inclusive, 71-A through D inclusive, 72, 73-A and B, 74-A through D inclusive, 75-A and B, 76, 77-A through D inclusive, and 78-A and B, were received in evidence.)

Mr. Mason: If your Honor please, I would like to make one statement of explanation in connection with a document which is document 67-A and B. This appears to be an agreement between Sherwood Brothers and Goodyear, it's unsigned; actually the fact is that it is really a draft, there never was such an agreement. The document by the way is dated July 14, 1937.

Mr. Kelaher: Your Honor, I think the record should also show that although there was no written agreement, although Commission Exhibit 67-A and B apparently was unexecuted, respondent Goodyear did have an overriding or a sales commission plan in effect with Sherwood Brothers, Inc., Baltimore, Maryland, in or about that 69 date. This document either preceded the beginning of that plan with Sherwood Brothers or the plan was in effect at that time.

Mr. Mason: Well, I take it that whatever facts are involved here will be introduced into evidence. I simply wanted to indicate that that document is not an actual agreement, it's an unexecuted document.

Mr. Kelaher: That's right.

Hearing Examiner Kolb: What document is that?

Mr. Kelaher: Exhibit 67-A and B.

(The above-mentioned document was handed to the Examiner.)

Hearing Examiner Kolb: I will correct my ruling to provide that Exhibit 67-A and B is subject to the motion to strike also by Goodyear.

Mr. Kelaher: Your Honor, at this time I would like to withdraw Commission Exhibit marked for identification as CX-id-10-A through E.

Hearing Examiner Kolb: Let the record show the exhibit withdrawn.

(The document referred to, heretofore marked for identification Commission's Exhibit 10-A through E inclusive, was withdrawn.)

Mr. Kelaher: This exhibit is a duplicate of Commission Exhibit 127-A through H.

Your Honor, at this time I would like to offer into 70 evidence Commission Exhibit for identification Number 139-A and B. This is an Atlantic Refining Company interoffice memorandum bearing notation "TBA-SJH" dated January 15, 1952, to A. B. Hersberger, re: "Staff meeting report," and refers to both Goodyear and Firestone sales commission plans.

Mr. Mason: Goodyear objects to the admissibility of this document in so far as it refers to Firestone on the same basis as earlier documents and in addition objects to the admissibility on the ground that the document being an internal memorandum of the Atlantic Refining Company it is not competent evidence against Goodyear.

Mr. Ballard: Your Honor, I believe that would fall within the Commission's ruling as far as it relates to Firestone, we would like to preserve our position on that matter but we would realize that you are bound by the Commission's ruling as far as the Firestone references are concerned.

Hearing Examiner Kolb: The objection will be overruled as far as Atlantic is concerned. As far as Goodyear is concerned it is received with motion to strike with respect to Firestone.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 139-A and B, was received in evidence.)

Mr. Kelaher: Your Honor, at this time I would like to

introduce into evidence Commission Exhibit for identification Number 134 which is an undated document found in the files of Atlantic Refining Company and relates to a survey made by Atlantic in certain areas subject to the Atlantic sales commission plans with Firestone and Goodyear.

Mr. Mason: Goodyear objects to the competency of this document not only because it has no notice of the document, it having come from Atlantic files, but because the document itself purports to reflect a survey and to which there is no evidence in the record, there is no way of knowing who made the survey, what kind of techniques were used, or what the information on the document actually means.

Hearing Examiner Kolb: May I see the document?
(The document was handed to the Examiner.)

Mr. Kelaher: We take the position, your Honor, that the document is self-explanatory and call your Honor's attention to the fact that respondent Atlantic interposes no objection to its admissibility.

Hearing Examiner Kolb: The document will be received in evidence subject to the motion to strike on the part of Goodyear.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 134, was received in evidence.)

Mr. Kelaher: Your Honor, at this time I would like to offer into evidence Commission Exhibit 156 which is an Atlantic Refining Company memorandum dated January 5, 1951, entitled "Station Modelization Policy."

Mr. Mason: Goodyear objects to the competency of this document since it had no notice of it. Furthermore, the document does not appear to relate to the commission plan of Goodyear or anything connected with the case.

Mr. Kelaher: Your Honor, the document—excuse me, go ahead, Mr. Ballard.

Mr. Ballard: Your Honor, Atlantic joins in the second objection as being not relevant to the case. The document appears to have simply to do with a plan or program for modernization although the word is "modelizing," I thing modernizing might be more accurate, modernizing the physical appearance of certain stations in some area or other and it just doesn't have, as far as I can see, anything to do with the subject matter of this proceeding.

Mr. Kelaher: Your Honor, the document refers to or relates, rather, to Atlantic's policy or relationship with its dealers which are alleged to be subject to the control and influence of Atlantic.

(The document was handed to the Examiner.)

The modelization policy is referred to in Commission Exhibit 155-E as relating to Class 2 dealers.

This policy illustrates the uniformity which Atlantic desires to have among certain of its dealer outlets 73 or possibly all of its dealer outlets.

Mr. Mason: So far all it indicates is there was such a document in the Atlantic files.

Hearing Examiner Kolb: The objection will be overruled. The document will be received in evidence.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 156, was received in evidence.)

Mr. Kelaher: Off the record, please.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

We will take a short recess.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: Your Honor, at this time I would like to

offer into evidence Commission Exhibit for identification ~~101-A~~ through Z-20 inclusive. This is a document entitled "TBA Study," dated May 1949, Sales Research Section, the Atlantic Refining Company.

Your Honor, this document reflects a study made by or under the supervision of the Sales Research Section of respondent Atlantic. It relates to the opinions and attitudes of 1,071 dealers in 47 cities from Massachusetts to Florida and the results of the survey are shown in the 74 document which I now offer into evidence.

Mr. Mason: Let me ask whether counsel supporting the complaint intends to introduce any evidence that this is what he says it is, other than the document it is?

Mr. Kelaher: I would like to call counsel's attention to the front page of the document which states, "TBA Study," and has thereon Sales Research Section, The Atlantic Refining Company.

This document was found in the files of Atlantic Refining Company.

Mr. Mason: My question is do you intend to introduce any evidence, because my position may be changed depending on whether you intend to actually introduce evidence to support the introduction of the document at some later time.

Mr. Kelaher: Your Honor, we take the position that the source data for this survey is in the hands of the respondent Atlantic and we intend only to introduce the study in so far as it relates to respondent Atlantic. We would have no objection to the document being introduced in camera because of the numerous other non-respondents and non-parties referred to therein.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Mason: I would like to ask the reporter to
75 read the part of counsel's statement when he said that
as to whom he was introducing it.

(The reporter read the following statement:

"Mr. Kelaher: Your Honor, we take the position
that the source data for this survey is in the hands of
the respondent Atlantic and we intend only to intro-
duce the study in so far as it relates to respondent
Atlantic. . . .")

Mr. Mason: Is that your position, Mr. Kelaher? I
don't yet know where the record stands on your offer.

Hearing Examiner Kolb: I think he is striking the
question on the matter you were talking about.

Mr. Kelaher: Off the record.

• Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: Your Honor, we are offering this with
respect to respondent Atlantic to show the research en-
gaged in by respondent Atlantic in determining which
marketing alternative it would adopt. This survey was
made in or about May 1949 preceeding the adoption of the
Goodyear-Atlantic sales Commission Plan and preceding
the adoption of the Firestone-Atlantic sales commission
plan, but it was an important factor in Atlantic's deter-
mination with respect to its adoption of such plans.

76 I would like to refer your Honor to Commission
Exhibit 136-B which is an interoffice memorandum from
Mr. S. J. Heideman of Atlantic to Mr. D. T. Colley of
Atlantic entitled, "TBA Conversion to Firestone and Good-
year Programs."

In the second full paragraph of 136-B the following
appears:

"Having established the fact that our TBA pro-

gram was somewhat unique among oil companies we then employed an outside agency to sample opinions of both Atlantic dealers and competitive dealers in our area. The important finding from this survey was that our present program was far from flawless and that there was a great deal of dissatisfaction with it among our dealers. The dealers of other marketers appeared more content with the TBA programs that were available to them."

We take the position that this survey was an important consideration in Atlantic's determination to adopt Goodyear sales commission plan and the Firestone sales commission plan.

Mr. Mason: If your Honor please, I am not clear on the present status of this record, whether counsel supporting the complaint is offering this document solely against Atlantic or whether it is being offered against 77 Goodyear as well. I wish counsel would take a position on that because obviously I don't have to object if he is not offering it against me.

Mr. Kelaher: Our position, your Honor, is that we are offering it generally because of its relevancy to the sales commission plans adopted by Atlantic with respect to both Goodyear and Firestone.

Mr. Mason: In that event, your Honor, I do object to the competency of the document. It is quite obviously the result of a lot of work done by persons unknown, according to procedures unknown, and reflects conclusions the accuracy and meaning of which is so far as I can see unknown, and for that reason Goodyear objects to its competency in evidence against Goodyear.

Mr. Ballard: Your Honor, with respect to Atlantic Refining Company I am also a little at a loss to know what this document is being offered for.

Mr. Kelaher said that he was offering it to show the research that had been done by Atlantic before adopting the sales commission plan. For that purpose, and if limited to that purpose, we would have no objection to it. Atlantic would admit that it had done this research.

He then read to your Honor from a letter, an inter-office letter, purporting to summarize what this study means.

If Mr. Kelaher is offering it to show that that is what
78 it means, again we would have no objection. I suspect, however, that Mr. Kelaher is offering it as most evidence is offered, to show the truth of the statements and reliability of the statements made in it and if that is his purpose we must object because, as Mr. Mason has said, the statements were obtained from persons unknown, by methods unknown. As a matter of fact, as far as we can tell the questions stated here were not the questions that were asked of the dealers, the answers stated here are not the answers that the dealers gave, the dealers were chosen on a basis which is not what you would normally associate with the word "random," and as to whether the study shows what is said on the first page or not, of course, no one could tell.

I think it is customary in these hearings to start with the assumption that a document will be identified by a competent witness before it is offered into evidence and the witness will be available for examination as to the meaning and make-up of the document.

So far we have waived that requirement with respect to all the exhibits that have been offered. In this case we do not wish to waive that requirement if the document is to be offered to prove the truth of the statements made therein, and we would feel that we would insist upon our right to have Mr. Kelaher produce a witness, and we would, of course, be glad to assist him in so far as we
79 are able in selecting the right witness so this document

can be properly described before it is offered into evidence.

Mr. Mason: If your Honor please, if I can say one further word as to Goodyear's position here.

The offering of this document against Goodyear is very similar to the situation that would be presented if the Commission were trying to introduce a survey made by an expert. At least that minimum qualification should be gone through before a document which is quite obviously on its face the type of thing that would be testified to by an expert is accepted in evidence for any purpose whatsoever against Goodyear.

Mr. Kelaher: Your Honor, I did think I made it clear that we are offering this document in order to show the results shown therein, reflected therein. For example, the Atlantic dealers, there is a caption with respect to Atlantic dealers throughout the survey and certain facts are expressed therein with respect to those Atlantic dealers.

Now, counsel for both respondent Atlantic and respondent Goodyear are contending that we are not introducing this survey through a witness. However, I would like to call your Honor's attention to the fact that the source data is in the hands of respondent Atlantic.

I would also like to call your Honor's attention to an article in 58 Yale Law Journal, 1242, entitled "The Trial of Economic and Technological Issues of Fact: II." by Professor George H. Dession, which is one of the leading articles in this field.

With respect to specially prepared material he states under C:

"The principle is clearly established that trial judges have wide discretion to permit the use of prepared or predigested material (as distinguished from responsive oral answers in interrogation by counsel in open

court, and from original source data) 'when reasonably helpful under the particular circumstances.'

"Summary: Where facts in issue can only be ascertained by the inspection of voluminous records, papers, books of account, or other data, the best evidence rule will be relaxed, and an oral or written summary allowed in evidence. The question is when the original sources thus summarized must already be in evidence, or at least available to the opposing party. But, however this may be determined, it is clear that the original sources must be of an admissible character.

"The foundation will usually be considered sufficient: (1) where the source data is produced in court, but not offered in evidence, or (2) where it is made available to the opposing party for purposes of check,
81 and cross examination, but not produced in court because of practical inconvenience, or (3) where the source data consists of public records, et cetera . . ."

which is number 3 and is not pertinent to this argument.

However, the source data is in the hands of respondent Atlantic, they have access to it, they certainly are in a position to know the basic data which entered into the survey itself.

Actually, they are in the position of attacking the reliability of a survey made under the, or made by or under the supervision of the company's own employees. I think there is a presumption that the survey was based upon sound principles.

Hearing Examiner Kolb: That might be true, Mr. Kela-her, if you were proceeding against Atlantic alone, but you also have Goodyear involved here and I think that Goodyear is entitled to know the nature and extent to which this survey was made, how it was done, and who did it.

and a few more facts which could be testified to by a witness before it becomes competent.

Mr. Kelaher: Your Honor, are you stating that it would be or are you implying that it might be admissible as against Atlantic subject to a motion to strike by Goodyear?

Hearing Examiner Kolb: Your statements, I think, would apply if you were proceeding only against Atlantic. You have two respondents here, you have Goodyear and you have Atlantic, and the difficulty you run into when you admit a document against one respondent is that it more or less smears the other eventually some place along the line, and under those circumstances I think that you probably should put a witness on the stand to give some information as to how this was conducted and the nature of it, and some information before it becomes competent.

Mr. Kelaher: Your Honor, I would like to state that that information is in the hands of respondent Atlantic, if they will furnish the witness we'll be glad to put him on the stand.

Hearing Examiner Kolb: I think counsel has agreed to give you a witness if you wish it.

Mr. Ballard: Yes, sir; I have agreed both before and on the record to do what I can to help Mr. Kelaher substantiate this thing if he wants to try to do it.

Hearing Examiner Kolb: Do you want to withdraw the offer at this time?

Mr. Kelaher: Your Honor, we suggest that it may be somewhat analogous to the documents which related to one named respondent and not the other which have been admitted into evidence subject to a motion to strike by the one respondent which has not had knowledge of the material.

Hearing Examiner Kolb: Well, counsel has agreed
83 to produce a witness for you. I think that some information should be in the record as to what this is other than a bunch of fractional figures or percentages.

Mr. Kelaher: Well, your Honor, we withdraw our offer.

Hearing Examiner Kolb: Let the record show that Exhibit No. 101 is withdrawn for the present.

Mr. Kelaher: However, your Honor, I believe it is clear it will be subject to renewal at a later date?

Hearing Examiner Kolb: Yes, it is withdrawn at this time.

Mr. Kelaher: Your Honor, we have three additional documents the first of which is a letter from G. V. Ostrander, Manager, New York Marketing Region, of Atlantic to Mr. D. T. Colley of Atlantic, dated April 19, 1950, entitled, "Firestone Tire and Rubber Company," which we ask to be marked as Commission's Exhibit for identification 188.

(The document referred to was marked Commission's Exhibit 188 for identification.)

Mr. Kelaher: We now offer this document in evidence, your Honor.

Hearing Examiner Kolb: Could I see the document a minute, Mr. Kelaher?

(The document was handed to the Examiner.)

Mr. Mason: The objections of Goodyear, your
84 Honor, with respect to this document are similar to those we have made in earlier instances. We press again our objection that documents having solely to do with Firestone should not be admitted in evidence in this proceeding and also this is a document from the files of Atlantic Refining Company as to which Goodyear has no notice.

Hearing Examiner Kolb: Under the Commission's ruling the document will be received in evidence subject to a motion to strike on the part of Goodyear.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 188 was received in evidence.)

Mr. Kelaher: We would now like to have marked for identification a document dated May 18, 1950 from M. G. Davis, Manager of Sales Promotion, New England Marketing Region, Atlantic, to Mr. S. J. Heideman of Atlantic as Commission's Exhibit 189 for identification.

(The document referred to was marked Commission's Exhibit 189 for identification.)

Mr. Kelaher: We would like to offer this document into evidence, your Honor.

Mr. Mason: We have the same objection, your Honor, and ask that it not be received.

Hearing Examiner Kolb: The document will be received in evidence subject to the motion to strike on 85 the part of Goodyear.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 189, was received in evidence.)

Mr. Kelaher: I would now like to have marked as Commission's Exhibit 190 for identification a document found in the files of Atlantic Refining Company from H. D. T, Vice President, presumably of the Firestone Tire and Rubber Company, to Mr. H. E. Powell, District Manager of Firestone Tire and Rubber Company, Pittsburgh, Pennsylvania.

(The document referred to was marked Commission's Exhibit 190 for identification.)

Mr. Kelaher: We ask that that be received in evidence.

Mr. Mason: Goodyear again objects to the competency of this document, first, it relates solely to Firestone and secondly, it's a document which Goodyear has no notice.

Hearing Examiner Kolb: The document will be received into evidence, Commission's Exhibit No. 190, subject to a motion to strike on the part of Goodyear.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 190, was received in evidence.)

87 Room 112,
U. S. Customs House and Appraisers Bldg.,
2nd and Chestnut Streets,
Philadelphia, Pa.,
Thursday, June 13, 1957.

Met, pursuant to notice, at 10:30 a.m.

88 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: At this time I would like to offer into evidence map entitled "Atlantic Philadelphia Metropolitan and Suburban District," with Commission exhibit number to be assigned tomorrow.

Hearing Examiner Kolb: You wish to question the witnesses on that?

Mr. Kelaher: Yes, your Honor.

Hearing Examiner Kolb: Is there any objection to that?

Mr. Thompson: No objection, sir.

Mr. Kelaher: I would like to call John Chambers to the stand.

Mr. Thompson: Mr. Examiner, for the convenience of you, sir, and counsel, we have had this map of the Philadelphia Suburban District blown up, and you will see an enlarged edition of it on the wall. I thought it might be a help to everybody.

Hearing Examiner Kolb: Very well.

JOHN CHAMBERS, was thereupon called as a witness for the Commission, and, having been first duly sworn, 89 testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name?

A. John Chambers.

Q. Your home address?

A. 14 Sycamore Avenue, Alden, Delaware County, Pennsylvania.

Q. Mr. Chambers, were you at one time employed in an Atlantic service station?

A. I was.

Q. Will you please state the period during which you were employed and by whom, and with whom?

A. Well, I would say from the latter part of '45 until the latter part of '48 with Ed Parris.

Q. Where was his station located?

A. Chester Pike and Clifton Avenue, Sharon Hill.

Q. After your employment with Mr. Parris, what was your next occupation?

A. Then I became a dealer at 2nd and Lloyd, Chester.

Q. What kind of a dealer did you become?

A. A lessee dealer.

Q. During what period did you operate the station at 2nd and Lloyd Streets?

A. From November of '48 until November of '52.

90 Q. And what type lease or what was the term of your lease during that period?

A. Yearly.

Q. Then in November of 1952 what transpired?

A. I moved to the location at Chester Pike and Clifton Avenue, Sharon Hill.

Q. And during what period were you at that location?

A. From November of 1952 until November of 1954.

Q. And what type station was that?

A. Lessee.

Q. Was it an Atlantic station?

A. That is right.

Q. And what was the term of your lease during the period when you were at the Sharon Hill station?

A. Three to six months.

Q. Is that renewable every three months?

A. Yes.

91 Q. Mr. Chambers, just to clear the record, during the period 1945 on or during the period when you were employed, were you with an Atlantic station?

A. Oh, yes, sir.

Q. And during the period of your first lease was that at an Atlantic station?

A. That is right.

Q. When you began operating as a lessee dealer in November of 1948, what TBA did you carry in your station?

A. Lee and Exide tires.

Q. You mean Exide batteries?

A. Exide batteries, I meant, and much of my TBA was outside jobbers.

Q. Your accessories were from local jobbers?

A. That is right.

Q. How long did you continue to carry these tires and Exide batteries and the line of accessories you were handling?

A. Until the change was made.

92 Q. And do you recall the events leading up to the change you referred to?

A. No, I don't recall anything other than came about.

Q. At or about what time did the change take effect?

A. I could not be exact on that.

Q. And what was the change, what was the change you are referring to?

A. The change was from Lee tires, of course, Exide batteries, to a 100 percent Goodyear.

Q. Was Goodyear a 100 percent Goodyear TBA?

A. Everything.

Q. What was included in that line, Goodyear tires?

A. Batteries, fan belts and the accessories that goes along.

Q. Did you in or about March of '51 attend a meeting of Atlantic dealers?

A. Oh, yes.

Q. What was the purpose of the meeting?

A. Well, to inform us the company was making that change and they felt it was better for the entire industry, that is, our service station business.

Q. When you say the company, to whom are you referring?

A. Whoever was handling the meeting at that time, I don't recall.

Q. What was the name of the company?

93 A. Goodyear and Atlantic.

Q. And approximately how many dealers were present at that meeting?

A. Well, I guess fifty or sixty.

Q. And after you were informed of the change-over as you call it, did you then begin to purchase Goodyear TBA?

A. Oh, yes.

By Mr. Kelaher:

Q. Did you observe whether other dealers changed to Goodyear TBA after the meeting referred to?

A. Yes.

Mr. Thompson: I object unless the other dealers which Mr. Kelaher is referring to are specified.

94 Mr. Mason: I object also.

Hearing Examiner Kolb: You may answer that.

By Mr. Kelaher:

Q. You may answer it.

A. Well, certainly I saw the merchandise around in other stations.

Q. And did you see the Goodyear TBA line go into the other stations?

A. Oh, sure.

Mr. Mason: I move to strike unless the stations are identified.

Mr. Kelaher: Your Honor, that is a matter of cross-examination.

Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. From whom did you begin to purchase your Goodyear TBA line?

A. From the Company distributor who was Ed Parris.

Q. At the time of the switch-over were any steps taken to identify your station with Goodyear signs of any type?

A. Yes, I just recall them putting these things across the window, I guess Decals or what have you, across the entire front of the building and re-sleeved a lot of my fan belts and hoses and identified them.

Mr. Mason: I move to strike the answer unless
95 "they" are identified.

The Witness: Goodyear re-sleeved the fan belts.

By Mr. Kelaher:

Q. Would you explain what is meant by re-sleeving?

A. Well, there was some thermoid belts and the sleeves were taken from that and Goodyear sleeves were put on it.

Q. You mean there was a change of brand name from thermoid to Goodyear?

A. That is right.

Q. Mr. Chambers, after March of 1951, did you purchase any TBA from suppliers other than Mr. Parris?

A. Yes.

Q. Would you please state the names of some of these jobbers at least from whom you purchased and the type of products you purchased?

A. I would say Chester Auto Parts.

Q. Will you please give the city where they are located?

A. Chester.

Q. Pennsylvania.

A. Right. Mac's Products is one.

Q. Is Mac's Products a line of chemical or waxes?

A. Chemicals and waxes.

Q. That would be an accessory item, is that right?

A. That's right. Of course, C. A. Powers, on recapping, snow grips.

96 Q. Where is C. A. Powers located?

A. Chester.

Q. What is C. A. Powers?

A. A Goodyear distributor.

Q. Did you purchase new tires and tubes from C. A. Powers?

A. Yes.

Q. In quantity or—

A. Never much quantity, no.

Q. Where was the bulk of your new Goodyear tires that you purchased?

A. Purchased from the distributor.

Q. And you say you had recapping done by C. A. Powers?

A. Right.

Q. Did Mr. Parris have recapping facilities?

A. No, not at that time.

Q. And would you name some of the other companies from whom you purchased?

A. Hymén Stein, who was in Chester, Zerex and Zerone.

Q. They are anti-freezes, are they not?

A. That is right. Then Auto Parts and Radiator Company in Chester, we purchased all polishes.

Q. And accessories. You can just identify them as accessories, tires, and batteries.

A. Just accessories.

97 Q. Were there any others you can recall?

A. Not in 1951.

Q. Well, from then on, from then until you left—

A. Well, V. J. Auto Parts in Sharon Hill, accessories, and Barrodin Auto Supplies in Philadelphia.

Q. Is that B-a-r-r-o-d-i-n?

A. That is right.

Q. And did you purchase a product known as Barsleak from any of these jobbers?

A. Yes, sir.

Q. Who did you purchase that from?

A. Barrodin.

Q. That's an accessory item, is it not?

A. Yes.

Q. What products did you purchase from V. J. Auto Parts?

A. Why, usually I would pick up items that I would have to have immediately and some accessories when there was a deal involved.

Q. Did you purchase Barsleak from V. J. Auto Parts?

A. I believe so.

Q. From whom did you purchase the bulk of your accessories?

A. The distributor, Ed Parris.

Q. Were any comments ever made by Atlantic representatives concerning your purchases of accessories from other than Ed Parris?

98 A. Yes.

Q. Would you please state some instances?

A. Well, I mean, there is the one that is the greatest in my memory right now was the Barsleak, and of course Joe Connelly was salesman at that time, and Joe would pick it up any say, "What are you doing with this," and he would set it back down.

By Mr. Kelaher:

Q. Were any comments other than the one referred to made by Atlantic representatives concerning the purchases of TBA from local jobbers other than Ed Parris?

Mr. Thompson: I object to the form of the question. The only testimony so far has been with reference to something called Barsleak which I have never heard of.

Mr. Mason: Objection.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. You may answer.

A. Why, yes, there was great criticism, shall I say,
99 in reference to outside merchandise.

Q. Who made these criticisms?

Mr. Mason: Just a moment, I move to strike the statement, the witness' answer, unless the statement is clarified, it is too general.

Hearing Examiner Kolb: I understand what Mr. Kelaher is doing, he is clarifying it.

Mr. Kelaher: Would you please read back the last question?

(The stenographer read back the last question as follows:

“Q. Who made these criticisms?”)

The Witness: Why, salesmen who represented the company.

By Mr. Kelaher:

Q. Which company?

A. Atlantic.

Q. Would you name some of the salesmen, if you please?

A. Of course, I only had about four during my time of dealership with Atlantic.

Q. Who were they?

A. There was Joe Connelly, Joe Muldoon, and Steve Petrison. There were three and the first was Al Vayda.

Mr. Mason: If your Honor please, I would like to move to strike the entire line unless the criticisms as such 100 are identified. We are still talking in terms of a very general word; it is meaningless.

Hearing Examiner Kolb: I assume the following series of questioning will bring it out.

Mr. Mason: I want it to be understood I am placing an objection and we will move to strike if it isn't brought out.

By Mr. Kelaher:

Q. Mr. Chambers, did the men or did any of the men you have mentioned make such criticisms?

A. You were always reminded that on check-out.

Q. What is meant by check-out?

A. Well, they were going—when you left the business, in other words, when they expired your lease or when they cut your lease, they would only accept that merchandise that they sold or handled. The outside merchandise would not be accepted at all.

Q. In other words, if your lease expired, are you stating

that Atlantic would not buy back any outside merchandise you purchased in the TBA line?

A. That is right, from outside sources if they did not handle it.

Q. And where did these conversations take place between the Atlantic salesmen and you?

A. Many times over a cup of coffee and sometimes 101 out in the driveway.

Q. Would it generally be a private conversation?

A. If it was to be of that private nature, yes.

Q. Well, when it was a criticism, was it generally of a private nature?

A. It was never done openly.

Q. What was your experience with respect to advertising of TBA when you—

Mr. Mason: Pardon me, have you left the line that has to do with criticism?

Mr. Kelaher: We covered that quite entirely.

Mr. Mason: I move to strike because the criticisms have never been identified. All we have is a very general characterization and statements that have been made.

By Mr. Kelaher:

Q. Mr. Chambers, you named a number of Atlantic salesmen—

Mr. Mason: I would like to have a ruling.

Hearing Examiner Kolb: The criticism which has been referred to was the statement with reference to the non-return of products which were not Goodyear. The objection will be overruled and the motion to strike denied.

102 By Mr. Kelaher:

Q. Mr. Chambers, with respect to advertising in your station, what was your experience during your time as an

Atlantic lessee dealer with respect to the advertisement of TBA products?

A. Well, as a dealer, you bought a package deal; I mean you paid for a package deal on advertising and of course they handled it for you.

Q. By "they" you mean who?

A. Atlantic handled the entire thing on a month-to-month basis; in other words, you bought it as a package deal.

Q. What products did you have advertised in your station?

103 A. All products sponsored by Atlantic, Goodyear.

Q. Did you advertise products not sponsored by Atlantic in the Goodyear TBA line?

A. Oh, no.

Q. Did you say no?

A. No.

Q. Why did you not advertise such non-sponsored products?

Mr. Mason: I object to the form of the question.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. You may answer.

A. Well, because it wasn't handled by the company and it wasn't included in the package advertising, and of course it just wasn't done.

Q. Did you ever attempt to advertise non-sponsored TBA?

A. Only through, shall we say, stickers or Decals on various things at the station.

Q. Was any comment ever made by such advertising, non-sponsored TBA by Atlantic representatives?

A. In reference to those advertisements?

Q. Yes.

A. Yes, sir.

Q. What comments were made?

104 A. To take them off.

Mr. Thompson: That is objected to unless the person who said that is identified.

By Mr. Kelaher:

Q. Will you please state the person who said that, from Atlantic?

A. Mr. Arnholt.

Q. Did you use credit cards at your station?

A. Yes, sir.

Q. Atlantic credit cards?

A. Yes, sir.

Q. And what products were you able to sell or what products did you sell on Atlantic credit cards?

Mr. Thompson: I object to that.

By Mr. Kelaher:

Q. What TBA products?

Mr. Thompson: Let's have the question read back.

(The stenographer read back the question as follows:

"Q. What products were you able to sell or what products did you sell on Atlantic credit cards?"')

Mr. Thompson: It is obviously a double question.

Hearing Examiner Kolb: Reframe your question.

By Mr. Kelaher:

Q. What brand of TBA products did you sell on Atlantic credit cards?

105 A. Well, on the credit cards there was some flexibility. Now on the polishes and what have you, why, we never ran into any trouble on the small items. But like most businesses you could not expect Atlantic who was

handling Goodyear tires to finance or charge Lee or Century, or something else.

Q. You never attempted to charge other than Goodyear on the credit cards?

A. Not on the big items; no, sir.

Q. What type of uniform did you normally wear at the station?

A. Well, we had a rented one that we paid for from—gee, I don't remember who it was.

Q. Was there ever a time when you did not wear the uniform you purchased?

A. There were many times; we got three suits a week on the rented setup and there were times when the suits were dirty and they were maybe on a holiday and something came in, of course.

Q. Did you ever change your type of cap?

A. Yes, once, I was never much for wearing a cap except these peak kind that service station people have.

Q. What kind did you wear?

A. I bought a leather hat, it's used by sportsmen; and at the time I bought a red one.

106 Q. Was any comment ever made by an Atlantic representative with respect to your uniform?

A. Yes. Mr. Arnholt asked me was I a gunner.

Q. Would you explain the incident?

A. Well, he apparently did not like the hat on me. He, with Mr. Connelly and Mr. Sanborn on the morning—

Q. All of Atlantic?

A. Yes, the hat was taken from my head and thrown in the waste paper basket.

Q. Who took the hat off your head?

A. Arnholt.

Q. What happened after that?

A. He took it out of the waste paper basket and put it back on my head again.

Q. At your request?

A. Yes.

Q. Did you keep books and records of your service station operation as an Atlantic lessee dealer?

A. Daily.

Q. Were those records inspected by an Atlantic representative?

A. Yes, I gave them full freedom to check my books and records at any time.

Q. Did that include inspection of your TBA purchases?

A. Anything that was in the book, sir, they were 107 free to check.

Mr. Kelahe: Mr. Examiner, I have a document which I would like to identify as Commission's Exhibit 274 for the reason that other documents have been identified, have been assigned numbers up to that number which will be put into evidence tomorrow.

Hearing Examiner Kolb: All right.

(Document identified as Commission's Exhibit 274.)

By Mr. Kelahe:

Q. Mr. Chambers, I hand you Commission's Exhibit 274 and ask you to state what that is.

A. Well, this is a letter that was sent out by Atlantic.

Q. Would you please give us the date?

A. This is October 14, 1954.

Q. And who was it from?

A. It is A. R. Sanborn, District Sales Manager, Philadelphia and Suburban.

Q. And would you please read the letter?

A. "Mr. John Chambers, Chester Pike and Clifton Avenue, Sharon Hill, Pennsylvania.

"Dear John: Our Phantom Customer Inspector has just reported to us that you received a 290 out of a possible 300 on a recent inspection.

"This is the kind of job which makes us all feel very happy and it certainly is an important factor in running 108 a profitable service station.

"Keep up the good work!

"Cordially yours"—Mr. Sanborn.

Mr. Kelaher: Strike the word—I think the word "feel" should be stricken, it does not appear in the letter.

Mr. Mason: Are you going to offer the document in evidence?

Mr. Kelaher: I have identified it. Are you making an objection?

Mr. Mason: No; simply as to its admissibility as to Goodyear. Goodyear is a stranger to this transaction.

Mr. Kelaher: I move that Commission's Exhibit 274 be received in evidence.

Mr. Thompson: No objection on behalf of Atlantic.

Mr. Mason: Goodyear objects because this is obviously a transaction that is between a third person and the witness and I do not believe the document will be admissible.

Hearing Examiner Kolb: The objection will be overruled.

(COMMISSION'S EXHIBIT 274 received in evidence.)

By Mr. Kelaher:

Q. Mr. Chambers, was it customary for the Phantom Customer Inspector to call at your station during your years as an Atlantic lessee dealer?

A. I think the Phantom was something new; I mean, 109 Atlantic was always service-minded and of course service and cleanliness is the basis of good business. Through these inspections, they kind of kept the boys on their toes. Many times they would receive a bonus such as a dollar or a certificate for a dollar, for the service rendered, and the merchandise displayed at the location and the cleanliness of the location. Of course, the 290 there is based on service, display, and cleanliness.

Q. Did you know or did you have any reason to know when the Phantom Customer Inspector was in your station?

A. No.

Q. Were you ever advised in advance of his appearance?

A. No, not on this chap; but some of the other ones we used to get a chain letter or by a phone.

By Mr. Kelaher:

Q. Mr. Chambers, you stated that you were an Atlantic lessee dealer until November, 1954. Would you please state the reasons leading up to November, 1954, when you left the Atlantic service station at Sharon Hill? In other words, state the reasons leading up to your termination of your lease in November, 1954.

Mr. Thompson: That is objected to; there has been no testimony that any of this has been terminated by anyone.

Hearing Examiner Kolb: Objection sustained.

By Mr. Kelaher:

Q. Mr. Chambers, you stated that you were an Atlantic lessee dealer until November, 1954. Would you please explain why you did not continue as an Atlantic lessee dealer after that date?

A. Well, because they cancelled my lease; that is the reason I wasn't a dealer.

Q. Would you explain that, please?

A. Well, I mean, I kind of think a lot of things led up to it. I just don't know exactly where to start.

Q. Well, let me ask you this: You received a letter dated October 14, 1954. Did any events transpire after that date?

A. When I received that letter, I was on my way out then.

Q. You were?

A. Yes.

Q. Why did you think you were on your way out then?

111 A. I was told I was on my way out.

Q. Would you please explain that?

A. Yes, I will. Atlantic was going on a commission basis with gasoline, which was fixing price, shall I say. We had to buy the gas or did not buy it, they put it in, stuck their tanks in and then we were charged with what we sold at a price. The salesman who was Steve Petrison made the rounds and according to my memory, he told me that he called on ten locations and out of ten locations he got five acceptances for the commission basis and five refusals. The five refusals were in an area, a given area of Sharon Hill, Darby, Collingdale, Glenolden, and they were not going to put up with that any longer.

Q. Who wasn't going to put up with it?

A. The salesman.

Q. Referring to the Atlantic salesman?

A. Yes. And we were going to have to take the commission deal and at that time he told me it did not make any difference whether I took it or not, my lease wasn't being renewed.

Q. Please go on.

A. I mean—

Q. Did he make any statement to you at that time?

A. Well, I said, "Is that it," I mean, "Are you serious?" He said, "Yes, dead serious." "Of course, 112 John," I said, this isn't my decision, it is the decision that was handed down from top level." I said, "It is rather cold and sudden, wouldn't you say?" He said, "That's the way it is, we are going to bust this up one way or another."

Q. What was he referring to?

A. A clique; that is, dealers that were trying to stay together. Can I go back a little bit?

Q. Yes, go ahead.

A. There were times in our business when we kind of felt as dealers we ought to make a few decisions ourselves. Many of the decisions were handed down by top level in the office, I believe, and maybe their intentions were good and maybe they were not. Nevertheless, we feel as dealers that we should operate as independent business men and make some decisions ourselves. We pay the rent and we know we have the location and we know we have obligations to meet. And many times the company through the competition factor which exists today even still would not go along with us to meet the tank-wagon price of the competitive deal.

Q. I see.

A. In other words, we will say a company would sell a tank wagon at 19.9 and we would still charge 21.9 on the tank wagon, yet we were expected to meet competition.

Q. I see. Even though the competitors had a lower price.

A. Yes, many of the dealers got together and we 113 said, "Look, we will meet competition when the company comes along with us and gives us a helping hand." At that time they had a zoned area, it ran like the Chinese Wall. This guy got it on this side of the fence and this guy did not get it on this side of the fence.

Q. By getting it, you are referring to—

A. A subsidy they gave, and while we tried to band together and hold our price until the company did something to help us. There were times when I had a cardboard sign or an "A" sign that we have out in front that we use for advertising purposes of either Goodyear tires or Goodyear batteries, or Atlantic Hi-Arc. You turn the face around on those and we painted the sign on them—26.9 or 23.9. I was asked by Mr. Arnholt to get two professional four by eight signs and this involved quite a hassle because I

checked into the price of the outside plywood and it ran me too much money. So I of course did not get the signs. So he said that when I told him I refused to get the sign, he said that—that is Mr. Arnholt—said to remember this conversation in the future because one day it would come up. So I kind of think that as far as my association with Atlantic which—

Q. Mr. Chambers, I want to keep you on this. After your conversation with Mr. Petrison did you go to Atlantic or to an Atlantic representative?

114 A. No, I asked through Steve Petrison to have an interview with Mr. Sanborn, to try to reason it out; I mean, I had moved to Sharon Hill with the thought of staying in Sharon Hill.

Q. I see.

A. I joined a service club and I was quite active in and around the town to try to put things on their feet up there and make a dollar myself. Of course, I had a lot at stake. At that time I was having family trouble at home and of course I was—everything piled up at once.

Q. At this time did you discuss the matter with Mr. Parris?

A. Yes; I, of course went to Ed because Ed to me in the years I had been with Atlantic, of course I started with him as a—

Q. Excuse me, Mr. Chambers, what was the substance of your conversation with Mr. Parris?

A. I asked, what in the world happened, what could I do. He said, "Jack, you have been turned in by three dealer salesmen for buying outside merchandise." I said, "Who?" He said, "Connelly, Muldoon, and Petrison" turned me in for buying outside merchandise.

Mr. Thompson: I object to this and ask it be stricken, your Honor. It is totally hearsay.

Hearing Examiner Kolb: He is stating a conversation he had.
115

Mr. Thompson: No, sir; he is stating what somebody said, somebody else said.

Mr. Kelaher: No, he is not; he is stating the substance of his conversation with Parris.

Mr. Thompson: The only possible relevance would be that it is a repetition of what Mr. Parris said and what somebody else said. This would be clearly within your double hearsay ruling.

Hearing Examiner Kolb: I will overrule the objection.

By Mr. Kelaher:

Q. About what approximate time did your conversation with Mr. Parris take place? I am referring to the month.

A. It would be in—I am only guessing, I cannot be accurate, I would say it was around the first week in November.

Q. And you state that you left in November of 1954. How did that come about?

A. That would be—actually, it would be in October when I was there rather than November 1st, it was the 13th of November I was checked out.

Q. Mr. Chambers, did Atlantic salesmen take TBA orders from you?

A. Yes.

Q. And, Mr. Chambers, when you checked out, as 116 you say, November of 1954 did you have an inventory TBA on hand?

A. Did I have an inventory?

Q. Yes, an inventory of TBA on hand?

A. Oh, yes.

Q. And did you or did Atlantic purchase any of that inventory?

A. Well, the purchase was to include everything that Atlantic sold and if the incoming dealer wanted to buy the outside merchandise they would not stop him, but that

was a personal check between the incoming dealer and myself.

Q. With respect to TBA, what did Atlantic re-purchase from you or purchase from you, rather?

A. Well, only that merchandise that they handled.

Q. Are you referring to the Goodyear TBA line?

A. That is right.

Q. Mr. Chambers, referring back to the time, to the dealer meeting when the switch-over to the Goodyear TBA line was announced, were you given any choice as to the brand of TBA that would be carried by Atlantic?

A. No, there was no choice; I mean the company said that they were going from one product which would be Lee and Exide, over to full Goodyear.

Q. Mr. Chambers, did Atlantic periodically hold so-called dealer meetings?

A. Yes, sir.

117-A Q. Did you ever attend any of those meetings?

A. Fairly near all of them.

Q. Was TBA ever mentioned at such meetings?

A. Well, yes, it would come up to that point; I mean, many of them were sales promotional meetings.

Q. Who would be present at such meetings of that type?

A. Well, the head of sales.

Q. For Atlantic?

A. Yes.

Q. Would anyone from Goodyear ever be present?

A. Only if a new product was coming out for something.

Q. They would be present on occasions?

A. Oh, yes.

Mr. Keiaher: No further questions, your Honor.

Hearing Examiner Kolb: We will take a short recess at this point.

(A short recess taken.)

Hearing Examiner Kolb: The hearing will come to order.

Cross-Examination by Mr. Thompson.

Q. Mr. Chambers, when you left Atlantic in November of 1954, you took over the Esso station at 4th and Sproul Streets in Chester?

Mr. Kelaher: Objection as irrelevant.

117-B Hearing Examiner Kolb: Objection overruled.

By Mr. Thompson:

Q. Did you understand the question?

A. Yes. The address is 9th and Welch.

Q. Is that close to 4th and Sproul?

A. Five squares and one.

Q. What was that again?

A. 9th and Welch.

Q. Would you mind pointing out that location to us on the Chester map?

A. It would be right in this area here, sir (indicating on the map.).

Mr. Kelaher: Mr. Examiner, if counsel is marking the map, perhaps some symbol should be made.

Mr. Thompson: That is my copy, for my information.

By Mr. Thompson:

Q. That is rather a prize station, isn't it?

Mr. Kelaher: Objection, your Honor. He is referring to his present Esso station. It is irrelevant in this proceeding, your Honor.

Hearing Examiner Kolb: The objection is overruled.

Mr. Kelaher: I might add that our direct examination, counsel is going beyond the scope of the direct examination.

118 Mr. Thompson: This is not beyond the scope.

Hearing Examiner Kolb: It may be involved in this.

By Mr. Thompson:

Q. That is rather a prize station, isn't it?

A. No, sir; I would not say so, sir.

Q. You are doing very well there, aren't you?

Mr. Kelaher: Objection.

The Witness: I am doing all right.

By Mr. Thompson:

Q. Mr. Chambers, you also did well for Atlantic in the station you had for them, didn't you?

A. I thought I did, sir.

Q. May I go back a little bit in your history. You started the history of your career in the oil business with the year 1945. That was right after the war, was it not?

A. Right.

Q. Before the war, weren't you a direct employee of Atlantic Refining Company?

A. Just for six months, sir.

Q. But then after the war, when you took the Sharon Hill station, Ed Parris to whom you have referred was the lessee, was he not?

A. That is right.

Q. Now, at the time, was he not what is called the 119 key dealer for the Atlantic Company, distributing Lee tires?

A. That is right, sir.

Q. And you very quickly became the manager of that station, didn't you?

A. Well, not quickly, sir; there was three dealers went out ahead of me.

Q. I meant the Sharon Hill station that Mr. Parris had under the lease, you were the manager of that station.

A. I became manager of that station, yes.

Mr. Kelaher: Your Honor, Mr. Chambers, has referred

to another Sharon Hill station and I think the record should be clear as to the period involved and the location of the station involved.

By Mr. Thompson:

Q. I am now talking, Mr. Chambers, about the year 1945 to 1948 when you were an employee.

A. That is right.

Q. Of Ed Parris at the Sharon Hill station of which you subsequently became the lessee, is that correct?

A. Not of that location; no, sir.

Q. Not the same station?

A. No, sir; I went from there to 2nd and Lloyd.

Q. Yes, but later you did get the same Sharon Hill station.

A. Yes, sir; later I came back.

120 Q. Now, having served as manager for Ed Parris; you were promoted to your own station, weren't you, at 2nd and Lloyd?

A. That is correct.

Q. And that was on Mr. Parris' recommendation, was it not?

A. I think so, sir.

Q. And you had that station from November of 1948 until November of 1952, I think you testified?

A. That is correct, sir.

Q. And you did a mighty fine job for Atlantic there, didn't you?

A. I think so, sir.

Q. Now, at the time of what you call the change-over; you were at the 2nd and Lloyd station, were you not?

A. That is right.

Q. Now, didn't the same Ed Parris become the distribution point for Goodyear?

A. That is right, sir.

Q. And at that time you were very close to him, were you not?

A. I always was.

Q. So that quite naturally you would buy TBA from him whether it be Lee or Goodyear, would you not?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Objection overruled.

The Witness: Yes.

121 By Mr. Thompson:

Q. Now, you referred to a meeting that you attended in the spring of 1951 when Atlantic announced to about fifty local dealers that they were going to go on the Goodyear plan?

A. Yes.

Q. I am now going to hand you a photostatic copy—Mr. Kelaher, instead of asking for the original—of Commission's Exhibit 150. Mr. Chambers, I show you a letter dated March 1, 1951 which is a photostatic carbon copy of a letter which is Exhibit 150 in this case and ask you whether you recall receiving that letter.

A. I probably did.

Q. You have no present recollection of it?

A. No.

Q. Well, at the meeting to which you referred did the Atlantic spokesman say to you dealers that the Goodyear plan was something which you could accept or reject and the choice was yours, words to that effect?

A. Probably could have.

Q. As a matter of fact they did, didn't they, Mr. Chambers?

A. I don't recall exactly.

Q. But that was the general sense of the meeting?

A. That was the general sense of it.

Q. Do you recall a similar meeting which was held 122 in August 28, 1952 when Mr. Mulholland became Atlantic's TBA coordinator, a breakfast meeting, with door prizes. Do you remember that particular meeting?

A. No, not offhand, I don't recall it, sir. Could you enlighten me?

Mr. Keleher: Just answer the question.

The Witness: No, I don't.

By Mr. Thompson:

Q. You did refer to having attended a number of Atlantic dealer meetings?

A. Yes, sir.

Q. Wasn't it pointed out to you on a number of occasions that the acceptance or rejection of a Goodyear plan was up to you fellows?

A. That is right.

Q. Mr. Chambers, having done a good job at 2nd and Lloyd, you were promoted again by Atlantic, weren't you?

A. No, sir, no.

Q. To the Sharon Hill station?

A. No, that is not a promotion, sir.

Q. Didn't you regard that as a promotion?

A. Did I regard it as a promotion?

A. Yes.

Q. If you drop from around 22,000 a month or 23,000 a month down to 9 and 10,000 a month, would you 123 consider that a promotion? I went up there on my ability to build it.

Q. Well, Mr. Chambers, the Sharon Hill station was leased to you at your specific request, wasn't it?

A. That is right; I wanted to move up there.

Q. You wanted to move up there.

A. That is right.

Q. Isn't it true that the 2nd and Lloyd Streets station was on the old Industrial Highway?

A. Well, it is still on the same Industrial Highway.

Q. It is the old Industrial Highway, isn't it, which had been by-passed by the new Industrial Highway?

A. No, sir; it is still the same highway.

Q. But it is just opposite the Ford Assembly plant, isn't it?

A. That is correct.

Q. There is not an awful lot of traffic that goes by there.

Mr. Kelaher: Objection, your Honor.

The Witness: It would not be safe to walk across the street at four o'clock without watching the light, that is how much traffic.

By Mr. Thompson:

Q. When the Sharon Hill station came up, you knew of course that Atlantic was going to reconstruct it, didn't you?

124 A. Yes, I did.

Q. And that was in a very competitive well-traveled area, wasn't it?

A. That is right.

Q. But you were in effect at that time taking over a station which you were just opening, weren't you?

A. Explain that to me, sir.

Q. It was re-opened as a new station, wasn't it?

A. I went in the old location.

Q. At the old location but it was re-opened as a new station.

A. I went through the construction of it, yes.

Q. So when you started to operate that station, you had to build the gallorage up, didn't you?

A. Yes.

Q. You did it very quickly, didn't you?

A. Well, not as quickly as I would have liked.

Q. But Atlantic was very well pleased with the way you handled it, weren't they?

A. They did not indicate so, sir.

Q. How about the salesmen, weren't they all close friends of yours?

A. Well, I think so.

Q. Joe Connelly?

A. Yes, I think so.

125 Q. He had nothing but praise for you, didn't he?

A. Joe always had a good word for me, sir.

Q. Isn't that also so about Muldoon and Petrison?

A. I can speak only for Joe; I had more contacts with Joe than I did with the other two.

Q. He was the one who was your salesman for the longest period of time?

A. That is correct.

Q. Now, there was certainly never any problems so far as Atlantic was concerned about your housekeeping. You got nice letters from them, didn't you?

A. Well, that letter, yes.

Q. As far as TBA is concerned, you were a star salesman, weren't you?

A. Well, you will have to reclassify "star salesman".

Q. If anybody in the service station business sells TBA at the rate of say thirty dollars for a 1,000 gallons of gasoline, isn't that considered exceptionally high and very good salesmanship?

A. Yes, I think it is.

Q. Isn't that just precisely what you did?

A. I thought I ran figures like that.

Q. You were running very high on TBA, weren't you?

A. I thought I did, yes.

Q. You were operating in an extremely competitive
126 neighborhood, weren't you?

A. Yes, extremely.

Q. The fact Sharon Hill, there are just a lot of competitive TBA outlets within a very short distance, is that not true?

A. Yes, like on any other highway, I think.

Q. Isn't that particular highway sometimes called "Gasoline Alley"?

A. I never heard it referred to as that; the lower end, not that upper end.

Q. Now, you were referred, by the way, to the Red Cap.

A. Yes.

Q. After Mr. Arnholt criticized that, didn't you put up a gag on him by getting some of the other dealers to wear red caps, too?

A. Never, sir; never.

Q. Didn't you do it just as a joke on Mr. Arnholt?

A. Never, sir.

Q. Now, I direct your attention, Mr. Chambers, to the fall of 1954. You testified, I believe, that you had at the Sharon Hill station entered into a series of rather short term leases with Atlantic.

A. I thought—from the time of the new one, they were short term leases, yes.

Q. And those short term leases were during what 127 you fellows called the build-up of the station, weren't they?

A. The construction.

Mr. Kelaher: Objection; it was not identified who those fellows were.

Mr. Thompson: By "you fellow", of course I am referring to the service station operators.

The Witness: I don't know as we had anything to do with it. The leases were brought in from the main offices, we did not write the leases.

By Mr. Thompson:

Q. Of course, you did not write the leases, Mr. Chambers, but you signed them, didn't you?

A. Well, yes, if you wanted to stay in there, you signed it.

Mr. Thompson: I would like to have marked for identification a document entitled, in large letters: "Atlantic", which purports to be a lease of October 1, 1954, between John Chambers and the Atlantic Refining Company.

(The document referred to was marked Atlantic Exhibit Number 1 for identification.)

By Mr. Thompson:

Q. Mr. Chambers, I show you Atlantic Exhibit Number 1 and ask you whether that is your signature on the back of it.

A. Yes, that is mine.

128 Q. Now, may I call your attention to the fact, sir, that this lease runs from October 1, 1954 to the 31st of December of 1954.

A. Yes.

Q. Now, do you recall discussions with Atlantic's representatives prior to the execution of this October 1st lease?

A. Discussions?

Q. Yes, about the terms of your lease.

A. I recall something but as to just what, I don't know. It was as to the rent.

Q. Well, at that time Muldoon was your salesman, was he not?

A. I don't recall, sir.

Q. Well, was it Petrison?

A. It was one or the other.

Q. Well, both of them were very anxious to keep you in that station, weren't they?

A. They were anxious to keep me in it, sir?

Q. Yes.

A. If they were I had no indication of it, sir.

Q. Mr. Chambers, do you recall that you were offered a long-term lease on October 1, 1954 at a higher rental than you had previously been paying?

A. No, I don't recall; if I was I turned it down 129 because of the higher rental setup.

Q. Wasn't your difficulty with Atlantic with respect to the amount of the minimum rent that you would pay under your leases during the build-up phase of this Sharon Hill station?

A. I would say that was about it.

Q. Now, did you ever have any discussions with either Mr. Muldoon or Mr. Petrison with respect to Atlantic's cost of this Sharon Hill station and the amount of rent which is required to get a fair return from its investment?

A. Yes, I had a few, and I thought a lot of the figures were over rated.

Q. You had been paying \$275 a month minimum rent at the station, hadn't you?

A. I don't recall the figures; if that was what it is, that is it.

Q. May I refer you to the October 1st lease.

A. Yes, if it is on there it must be.

Q. That lease was for \$275, wasn't it?

A. That is right.

Q. That is the rent you had been paying, is that not true?

A. If it is on there I paid it.

Q. Didn't Mr. Petrison and Mr. Muldoon tell you that in order to get a fair return on the investment the 130 company would require \$322 a month? Does that refresh your memory?

A. Yes, it does come back to me now.

Q. And they did offer you long-term lease for \$322 a month, didn't they?

A. I don't recall, sir; I cannot say.

Q. If that is their recollection, you would not dispute it, would you?

Mr. Kelaher: Objection, your Honor.

The Witness: If I cannot remember, I cannot dispute something I do not remember.

By Mr. Thompson:

Q. Didn't you turn down a further lease of this property because they wanted you to pay \$322 a month?

A. I disputed the rental setup because the gallonage was not—

Q. Do you recall the lease—

Mr. Kelaher: Will you finish your answer?

The Witness: Well, I just don't rightly recall. It seems to me like this was around the 3rd, I think the 3rd or it was to be the third rent increase in less than two years which wasn't giving me, I don't think, a fair chance in getting built to the peak. There was no telling what the peak was there and they were giving me no chance.

By Mr. Thompson:

Q. You, of course, were exceeding your minimum on 131 gallonage, weren't you?

A. No, sir; I was not.

Q. You were not?

A. No, sir. There are price factors there that was in the picture.

Q. Well, I perhaps did not make myself clear. I know of course that is a price war area, is it not?

A. Yes, predominantly a price war area.

Q. There is very strict competition.

A. Yes.

Q. Just from the point of view of the number of gallons

sold, you were exceeding the so-called minimum requirements for the station, weren't you?

A. No, sir; and my records will show.

Q. Had you received a proposition from Esso before the termination of your October 1st lease?

A. Well, when I had my notice, when I was given my notice, of course to look real fast. I had offers from all of the companies, sir.

Q. When you say your notice, what do you mean, sir?

A. When Petrison told me they were not renewing my lease.

Q. But, sir, may I refresh your recollection again. You actually did renew your October 1, 1954 lease, that was in effect on November 13th when you retired from the station, was it not?

A. No.

Q. May I refresh your recollection?

Mr. Thompson: May I ask that this document be marked as an exhibit? For the purposes of better identification, this is called, "Mutual Consent of Cancellation."

(The document referred to was marked Atlantic Exhibit Number 2 for identification.)

Mr. Thompson: Would your Honor care to see this?

Hearing Examiner Kolb: Thank you.

By Mr. Thompson:

Q. Mr. Chambers, I am handing you Atlantic Exhibit Number 2, called "Mutual Consent of Cancellation," and I ask you whether that is your signature on the bottom of that document.

A. That is.

Q. Does this document refresh your recollection with respect to the details of termination of the October 1st lease?

A. Surely if you were told in October you were not

going to have a job in December, what would you do, would you try to find another job?

Q. I think I am asking the questions, sir.

A. What do you want me to say, sir?

Q. My prior question was, whether you did not have 132 a proposal from the Esso Company before you signed the October 1st, 1954 lease?

A. No, sir, not before then.

Q. When did you get the Esso proposal?

A. Why, I got it by phone shortly after I had the notification or I was told that my lease was not going to be renewed in December, and then I got a phone call from a good friend of mine who had this station. And, of course, as I say, other ones moved in, too, and I accepted this one in Chester but it was after this here, because it wasn't until after I was told that my lease would not be renewed when I started to make phone calls.

Mr. Thompson: If your Honor please, I assume I may substitute a photostat of the two exhibits.

Hearing Examiner Kolb: Yes.

Mr. Kelaher: No objection.

Mr. Thompson: That is all the questions, Mr. Chambers, that I have to ask you. Thank you very much, sir.

Mr. Mason: No questions, your Honor.

Mr. Kelaher: I have a few questions.

Redirect Examination by Mr. Kelaher.

Q. Mr. Chambers, Atlantic Exhibit Number 1 states that your lease was entered into as of the first day of October, 1954, is that correct?

133 A. Yes.

Q. And did Mr. Petrison give you oral notice that your lease would not be renewed after the signing of the lease?

A. No, it was during this period that this other happened.

Q. In other words, did the lease come before the notice?

A. Yes.

Q. Mr. Chambers, on cross-examination you stated that there were certain rent increases during the period of your operation at the Sharon Hill station, is that correct?

A. That is right.

Q. Will you explain that, please? As I understand it, at that time you were on the three-months lease, is that correct?

A. Yes, sir.

Q. Would you please state how those rent increases came about or the extent of them and so on?

A. Well, I don't remember exactly; it would be difficult for me to say. All I know is that the latter rent increases I felt were unfair until the station really got on its feet.

Q. Would the rent increases be concurrent with the new lease going into effect; for example, would they put the rental in the lease, in other words?

A. The rental was always in the lease.

Q. So the leases would speak for themselves as to 134 the rentals?

A. That is correct, sir.

Q. Do you recall what your first rental was at the Sharon Hill station?

A. Not exactly, no, I thought it was around \$200.

Q. Do you recall the amount of the increase and when it occurred, the first increase?

A. Why, I think—there again I am not positive, I think it was either \$250 or \$275, I cannot be positive of that.

Q. When was that increase?

A. I cannot say.

Q. Do you recall how many increases there were during the period of your operation?

A. As I said before, it seemed to me as though, on this last lease, that would have been the third.

Q. And the last lease you referred to is Atlantic Exhibit Number 1, I believe. Would you look at that and state whether that was the last lease you signed with Atlantic.

A. Yes, that would be the last one.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Any further questions?

Mr. Thompson: No, sir.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

135 (Short recess.)

Hearing Examiner Kolb: The hearing will come to order.

JACK HOFFMAN was thereupon called as a witness for the Commission, and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you please state your full name and business address?

A. Jack Hoffman,—my home address?

Q. Business address.

A. 5913 Ridge Avenue, Roxborough, Philadelphia.

Q. And the name of your company?

A. Philadelphia Wholesale Distributors, Incorporated.

Q. And what is your position with that company?

A. Salesman.

Q. How long have you been with the company?

A. Thirty years.

Q. And you have been a salesman all that time?

A. Yes, sir.

Q. What type of business is the company engaged in?

A. We are wholesale distributors of automotive merchandise.

136 Q. And among the products that you handle, you handle tires, batteries and accessories?

A. In a limited way—we have discontinued tires.

Q. How about batteries?

A. Batteries; we are Exide distributors.

Q. How about chemicals; what do you handle?

A. DuPont, Hollingshead, Simonize, Johnson's, Prestone chemicals.

Q. Now, for the record, will you define chemicals. That is a broad field.

A. Chemicals are polishes, anything pertaining to preservation, finishes on an automobile, paint, touch-up, removers, solvents.

Q. How about spark plugs and fillers?

A. We carry a complete line of spark plugs and fillers and also other items.

Q. How about belts and hoses?

A. We carry the Gates line in belts and hoses.

Q. All those things other than batteries, are they commonly referred to as accessories?

A. They are referred to in the TBA industry as accessories.

Q. Does your company also handle so-called hard parts?

A. Yes, we do.

Q. And what are included among hard parts?

137 A. Hard parts we would classify as equipment in the operation of a service station and the servicing of automobiles equipment.

Q. Name just a few of those.

A. Well, do you mean manufacturers or the items?

Q. Items.

A. Lubricating equipment, which the service station comprises, and drain pans, oil mixtures, floor jacks.

Q. How about mufflers and ignition parts?

A. We do not carry any automotive parts, no replacements parts.

Q. I see. What type customers do you sell to, Mr. Hoffman?

A. Well, we deal with the service stations and car dealers, independent repair shops, some hardware stores, electrical shops, and sporting goods stores.

Q. And your sales area, the company's sales area, is what?

A. The company's sales area is metropolitan Philadelphia area and that includes Bucks County, Delaware County, Chester County.

Q. Are there other firms similarly engaged in the sale of similar products?

A. Yes, very many of them.

Q. There are many, you say?

138 A. Yes,

Q. How do you rank in the field, do you know?

A. We are one of the key distributors.

Q. How many salesmen does the company employ?

A. We have nine salesmen.

Q. How are they compensated?

A. I cannot answer that, I am on a straight commission basis.

Q. Do you deliver your products that you sell, do you, personally?

A. Our own trucks deliver our merchandises.

Q. How many trucks do you have?

A. I think we have five.

Q. Do they have regular scheduled trips?

A. That is right.

Q. How often do they go out, do you have any idea?

A. We deliver in my territory once and twice a week. In some territories there is one delivery a week and in other parts of the territory, twice a week.

Q. You mentioned your territory, what is your sales territory?

A. The greater part of Delaware ^{County} ~~County~~, south of Haverford Road including West Chester and Chester County.

Q. Do you attempt to sell to service stations?

A. We do sell to service stations.

139 Q. You, yourself?

A. Yes.

Q. And are there any Atlantic stations in your territory?

A. Yes.

Q. Can you give us some idea of how many there are?

A. Well, I could not answer that. I would say in Delaware County, I'm making a rough guess, there should be approximately forty to fifty Atlantic service stations.

Q. And how many of those—do you call on all of those?

A. We did at one time; we do not today. I have about six active, I had eight active Atlantic dealers I would say today.

Q. And there are forty or fifty in your own territory?

A. I would say so, I cannot give you the exact number.

Q. Have you ever attempted to sell to the others?

A. We have sold them over a period of years, yes.

Q. Did you lose those accounts?

A. We drift away from them, I would say. I would not say we lost them, I would say that we drifted away.

Q. You drifted away and for what reason?

A. We could not get enough volume of business from those dealers.

Q. When was that that you formerly sold them?

A. Well, pre-wartime and during the war.

Q. World War II?

140 A. Prior to 1945.

Q. And prior to 1945 you could sell them, is that correct?

A. Yes, we had but very few problems.

Q. And when did you start losing them?

A. Well, I would say when Atlantic established their own TBA setup.

Q. Will you place that, roughly?

A. I would say '45, after the war.

Q. Now, when you were selling to them, you were selling them these TBA products, were you not?

A. That is right.

Q. You say you have about eight active accounts, is that correct?

A. That is right.

Q. What do you sell to those stations?

A. Well, we sell those stations, the lessee Atlantic stations, we sell them mostly merchandise they cannot secure from the TBA jobber.

Q. Such as what?

A. Well, we sell them some chemicals possibly that they don't have; we can sell them lubricants also. There are not too many items. We sell them chamois, possibly, washing materials, items pertaining to lubrication.

Q. You mentioned that you can sell that to the
141 lessee Atlantic stations. Of these eight stations, about how many are lessee stations, do you know?

A. I would say six of them.

Mr. Thompson: I object to that; how can this man possibly know which is a lessee station and which isn't?

Hearing Examiner Kolb: He can answer if he knows.

By Mr. Dias:

Q. Do you know which of these eight are lessee stations?

A. Yes, six of them are lessee stations.

Q. Six of the eight?

A. Yes.

Q. And of those six you sell them the products you just mentioned, is that correct?

A. Right.

Q. What other type Atlantic station is there?

A. Well, then there is an Atlantic dealer who has a garage where he does automotive repairing, where he has gasoline pumps in front of his station.

Q. Would he be a lessee dealer?

A. No, he would not, I do not believe so; definitely not.

Q. How about batteries, are you able to sell any of these stations batteries?

A. Not today, no.

Q. Not today. Have you ever sold them any batteries?

A. Yes.

142 Q. When was that?

A. Some years ago we sold them batteries; I would say ten years ago, twelve years ago.

By Mr. Dias:

Q. How often do you call on these eight Atlantic stations that you sell?

143 A. Weekly.

Q. You call on them weekly?

A. As a rule; maybe we may miss one or two weeks but as a rule they are a weekly call.

Q. Do you go into the station, you go to the stations yourself, is that right?

A. Yes.

Q. And have you observed any advertising on the premises of TBA products other than your own?

A. The Goodyear merchandise primarily, with their decals on the windows and possibly the dealers make up their own signs of sales of Goodyear tires and Goodyear batteries.

Q. And from your own observation have you seen anything in those Atlantic stations other than Goodyear TBA products?

Mr. Thompson: What Atlantic stations are you talking about?

Mr. Dias: We are talking about the eight he sells to.

The Witness: Yes, you will find other products in Atlantic stations other than their regular TBA items.

By Mr. Dias:

Q. Such as?

A. Such as those supplied by the TBA supplier.

Q. Do you know who the TBA supplier is in your area?

A. Yes, very well.

144 Q. Who is he?

A. Ed Parris is one and Ernie Miller is the other one, — Miller's Automotive Supplies.

Q. And do you know where they are located?

A. Yes, I do. Ed Parris' is in Glenolden on McDade Boulevard and Miller's Automotive Supplies is Garrett Road in Upper Darby.

Q. Will you name those eight stations you sell to, Mr. Hoffman?

A. Will I name them?

Q. Yes.

A. Well, do I have to name them? I don't want to involve any of my customers in this. Yes, I will name them, it is all right. Roger Rossi in Upper Darby; John Clark in Havertown; Richard Connor in West Chester; George

Hewitt in West Chester; Floyd Mohny in Alden, and John Hanighan in Upper Darby. Those are lessee stations. I have two contract accounts.

Q. Will you name those?

A. Sharon Hill Garage in Sharon Hill and Little's Atlantic Station in Chester Heights.

Q. Did any of these stations open up new during the time that you have been selling that area?

A. Yes.

Q. Were you able to sell—

145 A. All of the lessee stations are new stations.

Q. Have you ever been able to sell them an original stocking order?

A. We did years ago. Some of these are newer dealers and some are older dealers.

Q. Which ones?

A. I would not say stocking orders, no.

Q. When did you first call on these stations after they opened up, did you call on them?

A. I have known these boys for a period of years possibly before they were Atlantic dealers, some of these boys.

Q. When did you get orders from them?

A. At times when I called them.

Q. Was that as soon as they opened up their stations?

A. Well, I would not say; no, I would say that, after they were established.

Q. When you first started selling to them, did they have any TBA supplies in their stations?

A. Yes, they did.

Q. Do you recall the brand names?

A. Well, they were—

Mr. Thompson: I certainly object to that, sir. There is not sufficient identification. You are talking apparently about stations scattered over the whole metropolitan area.

146 Mr. Dias: He is talking about the six or eight lessees.

The Witness: I am talking about six customers.

Mr. Thompson: The last prior question referred to contract dealers. Mr. Dias, would you make it specific, so we can follow.

By Mr. Dias:

Q. Let us refer only to these lessee dealers of yours. Let us go down the list.

Mr. Thompson: May I ask whether the last question has been answered?

Mr. Dias: That was my impression.

Mr. Thompson: If it did, I have no objection; but if it did not you are running the entire metropolitan area Philadelphia and I most strenuously object.

Mr. Dias: We were referring to the lessees referred to by the witness.

The Witness:

Yes.

By Mr. Dias:

Q. As to Roger Rossi, is that correct, how long has he been in business?

A. I would say Roger has been in business for twenty-five years.

Q. Now when did you first start selling him?

A. I sold Roger when he was a partner of Van Le-
147 roy Bond in Upper Darby.

Q. And Clark, John Clark?

A. I knew John when he was one of the Atlantic salesmen and after John got his station we sold him some items.

Q. Will you give me some idea of the volume you sold to the Clark station?

A. Very little.

Q. And you sell that station any batteries?

A. No, sir.

Q. Do you know what brand of batteries he carries?

A. He carries Goodyear.

Q. How about Richard Carr?

A. That is Connor; Richard Connor.

Q. When did you first start selling to him?

A. After he opened his station in Westchester.

Q. When was that?

A. I guess Dick has been there about five years, I would say.

Q. Were you able to sell him anything when he first opened up?

Mr. Thompson. I don't know what this word "able to sell" means, and I object to it. I don't know whether we are talking about the capacity of the man as a salesman or what ability we are referring to. The question has been constantly asked and I just don't understand it. It 148 does not help the record.

Hearing Examiner Kolb: I will sustain the objection.

By Mr. Dias:

Q. Did you or did you not sell to this gentleman?

A. Yes.

Q. And when did you first sell to him?

A. After he opened his station.

Q. How soon after he opened?

A. I would say several months.

Q. Was he stocked with other TBA merchandise?

A. Yes.

Q. What merchandice.

A. Well, the regular TBA line that Atlantic carries, Goodyear tires and batteries, chemicals.

Q. Were you able to sell him any batteries?

A. No, sir.

Q. Your next dealer was George Hewitt. Will you tell us when he opened up?

Mr. Thompson: Is that H-e-w-i-t-t?

The Witness: That is right. He has been a customer of mine for a couple of years but there is very little merchandise we sold him.

By Mr. Dias:

Q. Does he handle TBA products?

149 A. Of Goodyear and Atlantic.

Q. And your next dealer, Mr. Mohney?

A. Floyd Mohney.

Q. And how long have you been selling to Mr. Mohney?

A. Well, Mr. Mohney is a customer of ours for thirty some years and I have sold him about fifteen years.

Q. Does he carry TBA products?

A. Yes, Atlantic and Goodyear TBA.

Q. And your next lessee—

A. John Hanigan is a very small account.

Q. Does he handle TBA products?

A. That is right and Goodyear.

Q. Those supplied on the contract stations, you have two. Will you name the first one and tell me what you sell.

A. Sharon Hill Garage, we sell him some items. We sell him oil.

Q. Does he handle TBA?

A. Right.

Q. And what products?

A. Supplied by the TBA Goodyear distributor.

Q. And your next contract man?

A. Erwin Little in Chester Heights. That is one of our better accounts. He has been an Atlantic dealer since 1928.

Q. What do you sell to him?

150 A. We sell him batteries, Exide batteries and he is one of our best accounts.

Q. Do you sell him any accessories?

A. We sell him accessories, Kendall oil.

Q. Does he handle any other batteries?

A. No, sir; he does not.

Q. Now, in addition to these years that you have been in that sales territory, have you ever sold a new station, a new Atlantic station?

A. What type of merchandise are you referring to?

Q. Batteries or accessories?

A. No.

Q. Have you called on any new ones?

A. Yes.

Q. Have you observed other TBA products in the stations?

A. Very few; that is, on the newer stations. I would say those TBA products are those supplied by the TBA distributor primarily, particularly on the new stations.

Q. And what products were they that they were carrying, what brand?

A. The company station?

Q. Yes.

A. Which they purchased from the TBA supplier, you mean?

Q. No, these new stations you called upon.

A. Well, they would carry Goodyear tires, Good-
151 year batteries, the duPont line, Johnson, Simonize items that are carried by the TBA distributor.

Q. Are you familiar with the Goodyear battery accessory line?

A. As a competitor, I am. In other words, what do you mean by that?

Q. As a competitor, you are familiar with it?

A. Yes.

By Mr. Dias:

Q. You offer delivery service, do you not?

A. That is right, we do.

Q. And will you state again how often you offer delivery service?

A. Most of my territory. We make a delivery once a week and in some parts of the territory twice a week.

Q. Now, if you know, does the Goodyear supplier furnish or offer better service, delivery service?

A. He could, yes, because he is right in the area. We are a few miles distance from our dealer and we haven't 152 any fast delivery service. We have our routine delivery, and that is all.

Q. Are there any Shell stations in your territory?

A. I don't recall any.

Q. How about Sinclair?

A. Yes.

Q. And do you have some idea of how many there are?

A. Sinclair; there may be twenty or more Sinclair stations in Delaware County.

Q. In your sales territory?

A. Yes.

Q. Are you able to sell those?

Mr. Mason: I object to this line of questioning.

Mr. Thompson: I object also on behalf of Atlantic.

By Mr. Dias:

Q. Do you sell to Sinclair stations?

A. Yes.

Q. And what do you sell to them?

A. We sell—

Mr. Mason: I object to the line of questions as not being relevant to this lawsuit. There is certainly no connection in this setup so far as any new issues were brought up by the pleadings.

Mr. Dias: I thought that was settled by the Commission's order in regard to other oil companies.

153 Sinclair is one of the other oil companies that does business with Goodyear.

Mr. Mason: Not on a sales commission basis.

Hearing Examiner Kolb: The testimony will be received subject to a motion to strike by Atlantic.

By Mr. Dias:

Q. What do you sell to the Sinclair station?

Mr. Thompson: May I inquire, sir, for my own information whether this record shows that there is an arrangement between Goodyear and Sinclair for the supply of accessories to the Sinclair dealers under a sales commission plan?

Mr. Dias: You will find there is a commission plan with regard to accessories. Am I right about that?

Mr. Thompson: That was not my question. My question was whether the record showed it.

Mr. Dias: That was my answer; I thought there was an exhibit in here dealing with that.

Mr. Thompson: I have not seen it if there is, sir.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: Back on the record.

Mr. Dias: Let the record show, Commission's Exhibit 69-A through 70-c shows the existence of a contract, an accessory contract between Goodyear and Sinclair.

154 Mr. Mason: Does the Commission attorney concede that agreement does not apply to batteries and accessories and that it only applies to merchandise?

Mr. Dias: We should let the contract speak for itself.

Mr. Mason: I just wanted to have it in the record for the moment, we are going to have a line of questions on this and unless we are sure about it we don't want them

to go beyond the scope of the sales commission arrangement.

Mr. Dias: Yes, we will agree that it applies only to accessories in this area. We are not prepared to stipulate as to all areas.

By Mr. Dias:

Q. Now, limiting your replies only to accessories, Mr. Hoffman, do you sell accessories to Sinclair stations?

A. Yes, we do sell, sir.

Q: Will you tell us what accessories in particular you sell them?

A. Polishes, inner tubes, anti-freeze.

Q. Belts and hoses?

A. No, no belts and hoses; some pieces of equipment, jacks, some lubricating equipment.

Q. Do you know who the supplier is of Goodyear accessories for the Sinclair stations?

155 A. I don't know; they changed it some time. Superior tire had been it at one time, I don't know whether they are still the TBA distributor or not. I am not positive.

Mr. Dias: Your witness, Mr. Thompson.

Mr. Thompson: May I have a few minutes' recess?

Hearing Examiner Kolb: Yes, we will take a short recess.

(Short recess taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: I have no questions, sir.

Hearing Examiner Kolb: We will adjourn at this time until two o'clock.

(Whereupon, the hearing adjourned at 1:15 p.m. to reconvene at two o'clock p.m.)

(2:00 P. M.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Dias: Mr. Blumenthal, please.

Thereupon, DAVID B. BLUMENTHAL was called as a witness for the Commission and, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address?

A. David B. Blumenthal, 5913 Ridge Avenue, Roxborough.

Q. And the name of your company?

A. Philadelphia Wholesale Distributors.

Q. What is your position with the company?

A. Salesman.

Q. How long have you been with the company?

A. Thirty-eight years.

Q. Thirty-eight.

Q. Have you been a salesman all that time?

A. All that time.

Q. What is your sales territory, Mr. Blumenthal?

A. I would say it covers north of Hunting Park Avenue, north of Jenkintown, and Bucks County—part 157 of Bucks County, I should say, and Montgomery County, Roxborough, Manayunk.

Q. Do you work on a salary or commission?

A. Commission.

Q. What type customers do you sell to?

A. Mostly car dealers at the present time, and I would say maybe 20 percent service stations.

Q. Among those service stations are there any Atlantic stations?

A. I have one at the present time.

Q. Have you ever sold to more Atlantic stations?

A. Oh, yes. In the years gone by I have sold a lot of them.

Q. Will you tell us roughly how many is "a lot"?

A. Twenty-five.

Q. What type product—

A. Or thirty.

Q. What type products did you sell them formerly?

A. Well, as Mr. Hoffman related, we handled the full line of chemicals, and in those days I would sell them batteries, AC products, that is oil filters, plugs, and the kindred chemical lines—Dupont, whatever was the prevailing chemical at that particular day. I mean each year there is a new polish comes out, as you all know.

For instance, we handle turtle wax for the last two or three years as a polish. We are distributors of 158 Turtle Wax. Years previous to that there would be another wax. We would sell things like that to Atlantic dealers that they couldn't get through TBA.

Q. Why did you stop selling to Atlantic stations?

A. I just gave it up as a bad job. It was a question of making stops and not getting any business so I concentrated more on car dealers and stations that I could sell.

Q. How long ago was that?

A. It started about ten years ago, I guess.

Q. Do you sell to one Atlantic station now?

A. At the present time.

Q. Are there other Atlantic stations in your territory?

A. Oh, yes.

Q. Have you ever called on those stations?

A. Well, I have called on a few of them to try to sell

them some of the items that we handle. And in some cases I was successful. I mean kindred lines, not the lines that they handle, TBA. But as I said before, there is not enough to it and I more or less gave it up.

Q. On these Atlantic stations in your territory, do you observe them as you make your rounds? Have you noticed them?

A. Oh, sure. I go right past them.

Q. And in those you stop at, will you tell us what they advertise on their station in the line of TBA?

A. You have your Goodyear batteries and Good-159 year tires. That seems to be the feature on their windows, the decals. Other than that I don't see—unless they may put a streamer in the window, like Dupont, Exide, or something like that.

Q. You mentioned that you formerly sold them Exide batteries and Dupont line?

A. That is right.

Q. Can you give us some idea of the volume that you sold them?

A. Going back a few years, I would say it goes back maybe twelve years, ten years, the Dupont people supplied you with missionary men. You would go around with those missionary men, call on the accounts. It could be Atlantic or anything, whatever happened to be in the territory that particular day.

We always wrote up a lot of business in the Dupont line. When you asked for volume, I have written up as high as a thousand dollars in one day on Dupont. Of course it was a very good day. I am going back to the days when we sold 15 or 20 cases to a dealer and you would make 15 stops and you would sell a lot of merchandise.

Q. You talked about the Dupont line. What was your experience in the Exide line, Exide batteries?

A. With Exide, in those days, you would sell some

dealers Exide and they might prefer Willard or they might prefer something else. In those days they were handling practically anything.

160 Q. When did you begin to lose the Dupont line, do you recall? Lose sales in the DuPont line?

A. The only thing that I can tell you is this, and I can't put my finger on the date, but I would say maybe four or five years ago the Atlantis men would go around with the Dupont missionary men to the Atlantic dealers. Naturally by the time we got there it was too late.

Q. Can you relate a similar experience with reference to Exide batteries?

A. No, I couldn't.

Q. Do you recall any specific instances of loss of sale? Any specific stations, Atlantic stations?

A. Any number of them. I mean—you don't want names on this, do you? It could be ten or twelve stations in a particular vicinity where the Dupont manufacturer—the Dupont man, when he went out with me, would tell me there is no use going in that station, I was there with the Atlantic salesman a couple of weeks ago.

Q. Were you offering your Dupont line at the same price?

A. Definitely.

Q. Have you ever called on new Atlantic station operators in your territory?

A. No, sir.

Q. You have not? In the loss of specific Atlantic accounts did the operator ever give you any reason for refusing to buy?

161 Mr. Thompson: I object to the question unless it is made definite with respect to the time, the place.

Hearing Examiner Kolb: The question calls for a Yes or No answer; objection overruled.

By Mr. Dias:

Q. Did any Atlantic station operator ever give you a reason why he did not buy your merchandise?

A. I could answer that Yes or No. Some Yes and some No. That is the only thing I could tell you.

Q. As to those who did give you a reason, where the answer is Yes, can you give us the time and place and the name of the operator?

A. Sir, I would rather not do that. I would rather tell you my experience and let it go on from there, because I don't want to implicate any dealers in this thing. All I can tell you is this: That the proof of the pudding is that if you went into an Atlantic dealer and they—for instance, we do a big job on AC products. That is cartridges, spark plugs, which is one of the key lines that we carry. And it was practically impossible to sell them lines like that—cartridges or plugs.

You would go in and ask them about it and they would simply say, "We have enough, we will remember you the next time," or pass it off like that. There was never any definite reason for not buying, No.

Q. Do you recall what those particular stations were 162 handling in the TBA lines, what products?

A. They were handling the AC line, and Goodyear belt line, Dupont line. They are the three numbers that we were particularly interested in—AC, Dupont, and the battery line.

Q. Do you know where they got those lines from?

A. I know where my dealers get them from.

Q. Where do they get them from?

A. Mr. Glenn, Chestnut Hill.

Q. Mr. Glenn?

A. He is the Atlantic distributor.

Q. Is Mr. Glenn located in the Mount Airy section.

A. He is located at Willow Grove Avenue and German-town Avenue. That would be Chestnut Hill.

Q. Do you furnish delivery service in your territory, Mr. Blumenthal?

A. Oh, yes.

Q. How often do you furnish delivery service?

A. Well, in my particular case I get service out there pretty promptly. I would say my territory overlapping I get every other day service. In some cases, every day.

Q. Is that an important feature in selling to the Atlantic stations?

A. I wouldn't think so.

Q. You do not?

A. No.

163. Not the lines that we handle. There may be ignition or hard parts where they get a car that they have to repair and they have to have something in a hurry. But if a man is going to buy Dupont polish he doesn't run down to the last can before he has to re-order, or the same thing goes for spark plugs or cartridges.

In other words, if we could call on him every week and keep a supply up, it would necessitate a 24-hour service as far as delivery goes.

Mr. Dias: That is all, Mr. Chairman.

Cross-Examination.

Hearing Examiner Kolb: Cross-examine.

By Mr. Thompson:

Q. You sell to service station dealers for cash or credit?

A. Credit and cash.

Q. Depending upon the individual financial responsibility of each?

A. That is right.

Mr. Thompson: I have no other questions.

Hearing Examiner Kolb: That is all, Mr. Blumenthal.

Thank you very much for coming down.

(Witness excused.)

164 Mr. Dias: Mr. Kevis, please.

Whereupon DOUGLAS W. KEVIS, was called as a witness for the Commission and, having been duly sworn, testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address?

A. Douglas W. Kevis, 1309 West Ninth Street, Chester, Pennsylvania. That is Harris and Leonard.

Q. What type business is Harris and Leonard in?

A. Distributor of U. S. Tires. We have our own capping shop.

Q. Do you handle any products other than tires?

A. Tires tubes, batteries and recapping. That is the extent of it.

Q. What about the company sales area? Can you define that for us, please?

A. Yes. Chester. We go out as far as Chadds Ford. We don't go into 69th Street. We go down by the river all the way up to the Philadelphia Airport.

Q. What type of customer, class of customer, does Harris and Leonard sell?

A. We sell industrial accounts, commercial accounts, gas stations, new car dealers, garages.

165 Q. How many salesmen does the company employ?

A. We have two salesmen on the routes that cover gas stations, new car dealers, and garages. Joe Leonard and myself take care of the industrial and commercial business.

Q. Did you at one time solicit service station business?

A. Yes, I did.

Q. Can you tell us when that was?

A. Back in 1953 or 1954.

Q. For how many years prior to that?

A. I would say about six.

Q. How long have you been with the company?

A. Ten years.

Q. Have you been a salesman with the company that length of time?

A. Yes. Six months I spent in the office and then I went outside selling.

Q. How are you compensated? Salary or commission?

A. Salary and commission.

Q. Does your company have delivery trucks? Do you afford delivery service?

A. Yes. Two routes. They pick up and deliver twice a week. They stop in the service stations and garages. Then we have two trucks equipped with air compressors that take care of the industrial and the garages if they need it.

Q. How often do your service station account trucks 166 make deliveries?

A. They can make it any time. They will run back to the store, get it and take it out if it is a fast deal. But then they usually cover twice a week.

Q. You mentioned that there were two other salesmen that now solicit the service station accounts, among other accounts?

A. Yes.

Q. Who are those two?

A. Bob Brennan and William Colby.

Q. What was your territory when you were soliciting service station accounts?

A. Part of Chester, Media, all the way in. We didn't go into 69th Street. We went as far as Clifton Heights and down the river.

Q. Did you cover that territory in selling to, among others, service stations from the time you first started selling up to 1954, is that correct?

A. That's right.

Q. During the time that you were soliciting service station business, Mr. Kevis, were there any Atlantic service stations in your sales territory?

A. Yes.

Q. Can you give us some idea of how many there were?

A. That is a hard one. I can't come up with that just like that. There were quite a few.

167 Q. Did you solicit all those stations?

A. Oh, yes. Stopped at all those stations.

Q. Were you able to sell all of them?

A. Some recapping, and once in a while new tires if they—just in spots where they needed something in a hurry, a special thing.

Q. Among the Atlantic stations did you have any that bought your tires on a stock basis?

A. Well, there was one or two, but they were independents. They weren't set up as a class B station.

Mr. Thompson: I object to "independents" and ask that the answer be stricken.

The Witness: In other words, a man owned a building and everything else. He had Atlantic products in there.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Dias:

Q. What other type Atlantic station was there?

A. Just company-owned, I imagine.

Q. Were you able to sell or did you sell to company-owned stations on a stock basis?

A. No.

Q. Did you sell them any batteries on a stocking basis?

A. Once in a while, yes. Not too much.

168 Q. Was that on a stocking basis?

A. No, not on a stocking basis.

Q. With those company-owned stations, were you able to do any business with them?

A. Oh, yes.

Q. What type business?

A. Recapping.

Q. Among Atlantic stations, how often did you call on those stations in your territory?

A. Twice a week.

Q. On all of them?

A. Yes.

Q. Do you recall now the tires and batteries they carried in their stations?

A. Goodyear Tires, and Goodyear Batteries. They handled Lee before they had Goodyear.

Q. Can you tell us when that was, approximately?

A. I can't come up with that. I don't know that. I don't remember.

Q. Do you know in your sales territory at that time who the Goodyear supply point was? Who the Goodyear supplier was?

A. Yes. It was Miller, over in the 69th Street area. He used to come into Drexel Hill and points there. Then there was Ed Parris. He was in Sharon Hill at the time and 169 he finally moved into Glenolden, on McDade Boulevard.

Q. Were you at any time able to do any more business with the Atlantic stations?

A. How do you mean, "any more business?"

Q. You state that you were able to do some, that you did recapping and that you could sell an occasional tire or battery?

A. That's right.

By Mr. Dias:

Q. Have you ever sold any Atlantic stations on a stocking basis, tires and tubes?

A. Yes.

Q. What type stations were they?

170 A. I come back to that again.

Mr. Mason: I object on the ground the question has been asked and answered.

Hearing Examiner Kolb: Objection overruled.

The Witness: It is a station that isn't owned by Atlantic, and has Atlantic pumps in there.

By Mr. Dias:

Q. On the other type station that is owned by Atlantic, have you ever sold those stations, any of them, at any time, tires or batteries on a stocking basis?

A. Not on a stocking basis.

Q. By the way, what do you consider a stocking basis?

A. If a man puts in about 40 or 50 tires, I consider that a stocking basis, if he carries your line.

Q. In making calls on Atlantic stations, or in attempting to sell to them, did any operator ever give you any reason why he did not buy your line?

Mr. Thompson: I object to that question for the same reason as has been stated on this record before. No specification as to time or place or identity of people.

Hearing Examiner Kolb: That is a preliminary question I believe that requires a "yes" or "no" answer.

By Mr. Dias:

Q. You may answer. Was there such a situation?

A. I can give you a "yes" on that, but I want to
171 explain something to you.

Hearing Examiner Kolb: He will ask you a further question.

By Mr. Dias:

Q. The answer is "yes," is that correct?

A. Yes.

Q. Can you tell us a situation, or when it occurred?

A. I can't tell you when it occurred but I can tell you where it occurred.

Q. Can you tell me where and with whom?

A. With Jim Myers, over on Westchester Pike in Manoa.

Q. Can you give us a time, roughly, on that? Was it in 1954 or prior to that?

A. I wouldn't even begin to go into that. I couldn't really say the time.

Q. What did Mr. Meyers tell you?

Mr. Thompson: That is objected to, without some specification as to time—as to a time which would show it had relevancy in this proceeding.

Hearing Examiner Kolb: Can't you say, Mr. Witness, whether it was in the last few years or longer, or what period of time generally?

The Witness: Well, it was before I started on commercial accounts, I can tell you that. I don't know when.

172 By Mr. Dias:

Q. And you started on commercial accounts when?

A. About 1953.

Q. Have you been selling to that station, to that operator?

A. Been selling recapping, yes.

Q. Have you sold him any tires?

A. No.

Q. Or batteries?

A. No. I think we sold him one set of white-walls one time that he needed in a hurry.

Q. How about batteries?

A. No, no batteries.

Q. Can you recall, how long had he been buying from you?

A. Do you mean prior to this?

Q. Prior to the time that you went over on commercial accounts.

A. I would say he had been buying from us for a couple of years.

Q. That would be about—

A. I am not sure of this time limit in here. I am just sort of more or less guessing.

Q. Did he carry other tires and batteries and accessories in his station?

A. Yes.

Q. Do you recall what type or what brand?

173 A. It was Goodyear. Goodyear tires and batteries.

Q. If I suggest the year 1952, would that refresh your recollection as to when this conversation took place?

A. I couldn't tell you on that.

Q. You can't answer?

A. No.

Q. Did he ever carry anything other than Goodyear tires, batteries and accessories?

A. Not that I know of.

Q. Sir?

A. No, not that I know of.

Q. How about the price lines in U. S. Tires, Mr. Kevis, what are the various price lines? Do they have a first line, second line?

A. Now a third line. They had two lines before, at that time.

Q. Are they comparable to the price lines of the Goodyear tires

A. Oh, yes. In fact the list price is exactly the same.

Q. It is the same?

A. Yes.

Mr. Dias: That is all.

Cross Examination by Mr. Thompson.

Q. Your principal competitor in this business is C. A. Powers?

174 A. That's right.

Q. Am I correct in my understanding that your company and C. A. Powers sell to about 100 percent of the Atlantic stations in your Chester area? Almost all of them?

Mr. Dias: May I have that question?

The Witness: I couldn't answer that one. I don't know what C. A. Powers is doing. I attend to my own business.

By Mr. Thompson:

Q. But that is your principal competitor?

A. I would say yes.

Q. And Powers is also soliciting the Atlantic stations in your territory?

A. I believe so, yes.

Q. You have been out of this particular phase of the business since 1954, haven't you?

A. 1953 I think.

Q. Which of your salesmen handles the service stations in the area that you formerly had in your sales territory?

A. That route was split. They cover the whole thing now. It is split up into two routes.

Mr. Thompson: Thank you.

Mr. Dias: Will you read Mr. Thompson's last question?

(Question read.)

175 *Redirect Examination by Mr. Dias.*

Q. Was it your testimony that you sell to a hundred percent of the Atlantic accounts, or solicit?

A. We solicit them. We don't sell to them. You are talking territory now, generally?

Q. In the territory that we were discussing, your territory, yes.

A. Yes.

Mr. Dias: That is all.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(A recess was taken.)

176 Hearing Examiner Kolb: Come to order please.

Thereupon, GLENN L. WETZEL, was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address, please.

A. Home address?

Q. Yes.

A. Glenn L. Wetzel, 316 Arlington Avenue, Milmont Park, Pennsylvania.

Q. What is your position with Chester Auto Parts, Inc., Mr. Wetzel?

A. I am the president.

Q. Where is that company located?

A. Ninth and Hyatt Street, Chester.

Q. Will you describe generally the history of your com-

pany, that is, as to when it began, the type of products sold, and so forth.

A. It was begun right at the end of the war when I came out of service. It was then a partnership. It existed as a partnership for nine years, at which time I bought out my partner and formed a corporation of Chester Auto Parts Company, Inc.

177 Q. Do you recall the year when the company was organized as a partnership originally?

A. June 1, 1946.

Q. Do you recall the date when it was organized as a corporation?

A. April 1, 1955.

Q. What is the business of Chester Auto Parts, Inc.?

A. Parts, paint, chemicals, machine shop.

Q. Do you sell what are commonly described as TBA items?

A. Yes, sir.

Q. What is the marketing area of your company?

A. Delaware County.

Q. Delaware County, Pennsylvania.

A. Yes.

Q. How many salesmen do you employ?

A. Two and myself. I work on the road also. So there are actually three salesmen.

Q. How are the salesmen other than yourself compensated? On a salary or commission or both?

A. The salesmen—speaking of the other two—are compensated on a commission basis.

Q. What type of delivery service do you have?

A. Four trucks.

Q. Do you have an office staff?

A. Yes, sir.

178 Q. How many are in your office staff?

A. Thirteen in my employ all together.

Q. Do you maintain a stock of inventory at your place of business?

A. Yes, sir.

Q. Including so called TBA items?

A. Yes, sir.

Q. Would you please state the principal TBA products and brand names carried by your company?

A. Willard batteries, AC filters, Purolator filters, Fram filters, Dupont chemicals, Mac'sit chemicals, Hollingshead or Whiz products.

Q. What are they? What type products are they?

A. The last three that I mentioned?

Q. Yes.

A. They are primarily your chemicals, as they are known in the trade. That is your polishes, cleaners, radiator products, et cetera.

Q. To what type of customers do you sell? By "you" I mean your company.

A. Service stations, car dealers, independent garage men, body shops, used-car dealers, industrial accounts. Commercial or industrial accounts.

Q. Is your company generally competitive as to price, quality, and service with other sellers of TBA products 179 in your area?

A. Yes, sir.

Q. Do you sell fan belts?

A. Yes, sir.

Q. What brand do you carry?

A. It is Dayton Rubber. The manufacturer's name is Modac.

Q. Do you carry hose and belts of any type?

A. Yes, sir; same manufacturer.

Q. And same brand name?

A. Yes, sir.

Q. How long have you been an outside salesman with the company?

A. Eleven years.

Q. Since its inception?

A. Yes.

Q. Are there any Atlantic service stations in your marketing area?

A. Yes, sir.

Q. Approximately how many?

A. The exact number of Atlantic stations I couldn't tell you. I can more probably tell you the ones that we call on. It would be approximately 20, I would say.

Q. How frequently do you call on such stations?

A. That varies. Some of the accounts that don't buy or buy very little in the way of hard items are called on 180 possibly twice a month. The others may be called on four times a month.

Q. What has been your experience with respect to sales of TBA products to Atlantic service stations?

Mr. Mason: I object to the form of the question. It is too broad.

Hearing Examiner Kolb: Read the question.

(Read.)

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaheer:

Q. You may answer.

A. Well, shall we start at the beginning?

Q. Yes. Start back in 1947..

A. In 1947 and '48 sales to Atlantic stations were exceptionally good. At that particular time—

Q. Are you confining yourself to TBA in your answer?

A. Yes, tires, batteries, accessories, filters, fan belts; the standard line.

It was not too difficult to obtain—

Mr. Thompson: May I understand this. I understand you say tires, batteries, and accessories. I did not understand you before to say that you carried tires.

The Witness: Excuse me. I don't carry tires. I meant batteries and your other rubber products, other than tires — hoses and fan belts.

181 At that time it wasn't difficult to sell Willard batteries because batteries were scarce. If you went in and had batteries, it was possible for you to sell them. Brands were not important, whether it was Exide, Williard, Auto Lite, or whatever it was; they were all using whatever they could obtain.

At that particular time we tried to develop the Macsitt line ourselves, which had not been marketed to any great extent through service stations in that area. And I felt that inasmuch as it was a line which no one else had, if I developed it, it was mine.

By Mr. Kelaher:

Q. What did that line consist of?

A. That was your wax and radiator, speciality lines. Waxes, polishes, et cetera. I was successful in building that to a point where my purchase approximated \$5,000 to \$6,000 a year. However, about that time—

Q. Pardon me for interrupting. Would you state what time that was, what year?

A. I would say 1949 I began to peak out on that. 1949 or 1950. Somewhere in that vicinity.

Mr. Mason: Are these purchases confined to Atlantic stations?

Hearing Examiner Kolb: So I understood.

Mr. Kelaher: He is talking about his own purchases.

182 The Witness: I am speaking of my purchases.

To go back to 1949 or 1950 and break out all indi-

vidual service station sales would, well, if you gentlemen would like to do it, I will give you the records.

Mr. Mason: That is the vice of this kind of testimony. It is meaningless.

Mr. Kelaher: If we are given an opportunity, we will develop this.

Mr. Thompson: I do understand Mr. Kelaher, that this line of questioning applies to the business generally and not to Atlantic stations.

Mr. Kelaher: I will let the witness answer that question.

By Mr. Kelaher:

Q. You stated that your peak sales reached \$5,000 or \$6,000 maximum about 1949 or 1950?

A. Yes, sir.

Q. And the \$5,000 or \$6,000 represents the purchase price of your company, by your company of the Mac's-It line?

A. Yes.

Q. To whom did you sell the Mac's-It line?

A. The Mac's-It line was sold to service stations, which included Atlantic, Sinclair.

Q. Approximately—

A. No Sun and no Gulf. We have never done much 183 business with either of those two. Basically Sinclair and Atlantic.

Q. Do you know approximately how many Atlantic and Sinclair stations you were selling to at that time? How many Atlantic stations were you selling Mac's-It to at that time?

A. I would approximate 20 or 25 stations. It is difficult to say specifically at this time.

Q. Approximately how many Sinclair stations was the Mac's-It line sold to at that time?

A. Probably 15 to 20.

Mr. Mason: May it be understood that I have a running objection to questions concerning Sinclair stations?

184 Hearing Examiner Kolb: The objection as to the Sinclair stations will be overruled so far as Goodrich is concerned, and it will be received subject to a motion to strike so far as Goodyear is concerned.

Mr. Thompson: I understand this is applicable to all these questions. ✓

Hearing Examiner Kolb: Yes.

By Mr. Kelaher:

Q. What was your normal markup on the Mac's-It line at that time?

A. I grossed 20 percent on resale of that merchandise. That is wholesale, not resale. In other words, I bought it at 60 and sold it at 40, approximately.

Q. So a \$5,000 purchase would represent about a \$6,000 annual volume of sales, is that correct?

A. Yes.

Q. Did you—who were the principal purchasers of the Mac's-It line at that time?

A. Atlantic and Sinclair.

Q. Now, would you take the story from there?

A. About that point the TBA structure began to develop within the service station marketing area, and I saw my sales of Mac's-It drifting away. It was being supplied through TBA structure of distribution rather than the jobber structure of distribution, and it continued 185 to drop to a point where I decided to drop the line.

In other words, that was the distribution of the line. I had to sell something that I wasn't in competition with TBA in order to remain within the market.

Mr. Mason: Can you fix the time?

The Witness: I would say about 1951.

By Mr. Kelaher:

Q. You lost the market about 1951 on?

A. It began to drop in '50 and continued to drop until 1951, about 1951 I took on the distributorship of Hollingshead or Whiz products.

Q. Did you continue to purchase the Mac's-It line after 1951?

A. Yes, but only by demand. My purchases of Mac's-It dropped to a tenth of my purchases. I was below a thousand dollars in purchases of Mac's-It products.

186 By Mr. Kelaher:

Q. About 1951, did you observe to whom the Atlantic stations were purchasing the Mac's-It line from?

A. Ed Parris.

Q. Who is Ed Parris?

A. He is the Atlantic TBA distributor in Glenolden. At that time I think he was located in Sharon Hill and has since moved to Glenolden.

Q. Can you give us the names of any Atlantic dealers whose business was lost—whose Mac's-It business was lost to Mr. Parris?

A. Yes.

Q. Would you please state those names and their station locations, if you can?

A. Burt Rehill—

Mr. Thompson: Is this a matter within this witness knowledge, Mr. Kelaher?

By Mr. Kelaher:

Q. I would like your answer to be based on your own knowledge.

187 A. This is on my own knowledge. They were my own accounts.

Q. Go ahead.

Mr. Thompson: Just a minute. Would you mind repeating the question?

(Question read.)

By Mr. Kelaher:

Q. Go ahead.

Mr. Thompson: I don't understand, sir, whether he is saying that it is to his own knowledge that he lost the accounts, or to his own knowledge that Mr. Parris lost the accounts.

Mr. Kelaher: To his own knowledge that he, meaning Mr. Wetzel, lost the accounts to Mr. Parris.

Mr. Thompson: How could he know whether he lost it to Mr. Parris?

Mr. Kelaher: Let the witness answer that.

Hearing Examiner Kolb: I think we are getting too technical.

The Witness: It is very easy to answer. The packages come in with Ed Parris' name right on them.

By Mr. Kelaher:

Q. Go ahead. Give the names.

A. John Rehill—

Q. Let's get the first one.

A. Burt Rehill.

188 Burt Rehill, 9th and Kerlin; John Rehill.

Q. Would you give the city, too?

A. That is Chester. John Chambers, Second and Lloyd; Al Kohler, 22nd and Edgmont; Langhead Service Station, Lynwood; Joe Boice. That would be Chester Pike and Oak Lane. That is Folcroft, I guess there.

Joe Abel, Fairview Road and Chester Pike, Crum Lynne.

Q. Did you at one time sell the Mac's-It line to a Chet Drozdowsky, Eddystone, Pennsylvania?

A. Yes.

Q. What was your experience on the sale of the Mac's-It line to Mr. Drozdowsky?

A. The same situation.

Q. And he was an Atlantic dealer?

A. Yes, at that time there was another man in there by the name of Charley Miller, at Chester's present location, and Chet was located at about 10th and Morton.

Q. He was at 10th and Morton location when this incident occurred?

A. Charley Miller was in on that other group. He was at the Eddystone location.

Q. Did you also lose the business of Charles Miller?

A. Yes.

Q. Was he an Atlantic dealer?

A. Yes.

Q. Did you at one time sell the Mac's-It line to 189 George Curney of Ninth and Flower Street, Chester, Pennsylvania?

A. Yes.

Q. What was your experience with Mr. Curney?

A. Well, George came in just—that had previously been Burt Rehill's station there, and he moved from there to Ninth and Kerlin, and George came in about the time that I began to push the Hollingshead line or the Whiz line. George had bought small quantities of Mac's-It, but he went on to the Hollingshead line to a greater extent.

George just came into the picture about the time I went into transition from Mac's-It to Whiz.

Q. Did you at one time sell the Mac's-It line to an Atlantic dealer named Bill Sikorsky?

A. Yes. At the time I sold him he owned his own location. I never lost Bill's business.

Q. Where was he located?

A. He was at—he operated as Chester Highland Garage. He was at the corner of Highland Avenue and I

believe Chichester Road, a Chester post office. It could possibly be a Feltonville post office.

Q. You stated that he owned his own station. Didn't these other Atlantic people own their own stations?

A. No, sir.

Q. Did you at one time sell the Mac's-It line to a Jack Pollock?

190 A. Yes. That is the location that Burt Rehill formerly had. Jack Pollock was in that location before Burt. These dealers move around.

Q. What was your experience with respect to sales of the Mac's-It line to Mr. Pollock?

A. It was a comparable situation.

Q. By that do you mean that the Mac's-It line business was lost to Mr. Parris?

A. That is right.

Q. Do you recall the names of any Sinclair dealers to whom you sold the Mac's-It line, and whose business was eventually lost?

A. Yes. I think I can name a few of those.

Mr. Mason: I have my objection.

Hearing Examiner Kolb: It will be the same ruling as the previous. We will have that standing objection and ruling. And also on Sinclair.

By Mr. Kelaher:

Q. Will you answer the question?

A. Ed Roszel. That would be Post Road, trainer. It is right at the Sinclair refinery.

Q. Continue.

A. Jim Medcalf. That would be Ninth Street, right at the Delaware line. I don't know what the post office is there.

Q. Is that in Chester, Pennsylvania?

191 A. It is just out of the State of Delaware. It is just off of—it is at the foot of the Sun refinery. After

you pass the Sun refinery it is the next station past there.

Q. Did you at one time sell the Mac's-It line to a Sinclair dealer named George Nichols, 15th and Providence Road, Chester, Pennsylvania?

A. Yes.

By Mr. Kelaher:

Q. Mr. Wetzel, based on your own knowledge and experience, will you please state to whom the Mac's-It line business was lost with respect to the Sinclair stations?

A. Originally it was lost to a man by the name of Odijan. He has since deceased and has been replaced by Superior Tire.

Q. Where is Superior Tire Company located?

A. I am sorry, I can't give you their address.

Q. Is it in Philadelphia?

A. It is in West Philadelphia, I believe.

Q. What products did Steve Odijan supply, or what 192 line of products, TBA products, did Mr. Odijan, and later Superior Tire Company, supply?

A. Goodyear.

Q. Did you at one time sell the Mac's-It line to a Sinclair dealer or dealers by the name of Radewon Brothers?

Mr. Thompson: When you say "could", I suppose you mean "did you"?

Mr. Kelaher: I thought I said "did you".

Mr. Thompson: I thought you said "could you".

By Mr. Kelaher:

Q. Did you?

A. Yes.

Q. What is your experience with respect to Radewon Brothers with respect to the Mac's-It line?

A. Same situation.

Q. Was that business lost to Odijan?

A. Originally, yes.

Q. Did Radewon Brothers have two Sinclair stations?

A. Yes, one in Media, and one in Folsom.

193 Q. Did you at one time sell the Mac's-It line to a Sinclair dealer named Fusco Motors, Swarthmore, Pennsylvania?

A. Yes.

Q. What was your experience with respect to this dealer?

A. Same thing.

Q. Same as the others?

A. Yes.

Q. By that do you mean that you lost the Mac's-It line to Mr. Odijan?

A. Yes.

Q. Originally; and then Superior Tire Company?

A. Yes.

Q. For the record, would you please state whether Mr. Pollock owned his own station.

A. No, he did not.

Q. You stated that you also sold the Hollingshead line under the brand name of Whiz, I believe.

A. Yes.

Q. What Whiz brand line? What constitutes the Whiz brand line?

A. Very comparable to your Dupont or your Mac's-It line, or Simoniz line. It constitutes polishes, cleaners, radiator specialties, sealers, et cetera.

Q. Would you state your company's experience with respect to the Whiz line of waxes and polishes among 194 Atlantic and Sinclair stations particularly?

A. Well, when you have salesmen working on commission, you have to have something that they can sell. So finding that the Mac's-It line was drifting away for us,

there was only one solution, to find something else to sell it and try to have it exclusively, which we did.

We took on the Hollingshead line and tried to replace wherever we could the Mac's-It line within the operations that were then using Mac's-It. They had originally been Dupont. We changed them from Dupont to Mac's on a selling basis. Now we had to unsell what we had sold and sell the Whiz, which we proceeded to do. We built that up to very comparable figures to our Mac's-It line.

Q. Comparable figures? Will you state approximately what your annual purchases were built up to?

A. In the vicinity of \$6,000. Somewhere between \$5,000 and \$7,000 annual purchases.

Q. What was your general mark-up on the Whiz line?

A. The same as on the Mac's-It—20 percent.

Q. So a \$6,000 volume would be a \$7,200 selling volume?

A. Yes, sir.

Q. Who were your principal purchasers of the Whiz line?

A. Our previous purchasers of the Mac's-It line.

Q. And then were your previous purchasers of the Mac's-It line—did they continue to purchase Mac's-It products?

195 A. We replaced them pretty completely. It took about a year or a year and a half, but we pretty well replaced them.

Q. What was your experience with respect to the Whiz line? Would you please state the years you are speaking of?

A. We began with Whiz, I would say, in late 1951 or probably early 1952, and the build-up period was probably the same length of time, a year or a year and a half. So we probably peaked out somewhere around late 1953 or '54 on our Whiz products.

Q. Would you please state your experience with respect

to the Whiz line in so far as it relates to the Atlantic market?

A. There again the product was available to the TBA distributor, or whatever they wished to call that individual, through Goodyear, and our sales were again replaced. In other words, the repeat business was lost to us and picked up by the TBA distributor.

Q. Was that repeat business picked up on the Whiz line or on another line?

A. It was picked up on the Whiz line.

Q. Which was handled by Mr. Parris?

A. Yes.

Q. And by the Superior Tire Company at that time?

A. Yes.

Q. Did you lose any of the business of the Atlantic or Sinclair service stations on the Whiz line?

196 A. Yes, sir.

Q. You did?

A. Yes.

Q. Can you give us the names of the Atlantic dealers to whom that business was lost?

A. Exactly the same group.

Q. The same group—

A. In other words, it was a repetition of the Mac's-It development and loss.

Q. Can you give us the names—and by “the same group” you are referring to the names you previously stated with respect to the Mac's-It line?

A. Yes. Probably with the exceptions of where dealers had either moved or been replaced by other dealers. But they were the same locations.

Q. Can you give us the names of the Sinclair dealers whose business you lost on the Whiz line?

A. It would be the same that I gave you on the Mac's-It.

Q. The same Sinclair dealers, or locations, possibly, if a dealer had—

A. You are better off to name it as locations, because the dealers do change from time to time.

Q. Can you tell me whether your purchases and sales of the Whiz line declined from that peak period you 197 referred to, late 1953 or '54?

A. Yes, sir, it has. My purchases this past year on Whiz were below \$500.

Q. Were the bulk of your sales of this line to Atlantic and Sinclair stations as previously?

A. Yes.

Q. Do you recall any conversations with Atlantic dealers relating to your loss of business on the Mac's-It or Whiz lines?

A. Yes.

Q. Would you please state the names of the individuals with whom you had such discussions, and the approximate time?

198 A. Burt Rehill; 1952.

Q. For purposes of convenience, I think it would be just as well if you gave us the substance of the conversation as you went along. Would you state what reason Mr. Rehill gave you at that time?

Mr. Mason: I object to the form of the question. If he wants to have what he said, all right. But let's have no characterizations.

Mr. Kelaher: That is exactly what I am asking him.

Mr. Mason: That is not what you asked him.

Mr. Thompson: Will you accept the amendment?

Mr. Kelaher: I will accept the amendment.

By Mr. Kelaher:

Q. Just state the conversation.

A. The conversation was to this effect—

Mr. Thompson: May we have the place where it occurred?

199 Mr. Kelaher: Yes.

A. In his place of business. "Sorry, Glenn, but I have to reserve this for Ed Parris. You understand the situation. I am in an Atlantic station. I must buy from an Atlantic TBA distributor."

By Mr. Kelaher:

Q. Do you recall any other conversations with other Atlantic dealers or Sinclair dealers, along similar lines?

A. Yes. John Chambers.

Q. Please state the time as nearly as you can, the place, and what was stated.

A. I would approximate the time at about 1953, possibly 1954. I wouldn't know exactly any more. But it was to the effect that he had to stop buying from me. He was told that he was buying too much on the outside from outside distributors, meaning V. J. Auto Parts and myself, which were specifically named.

Mr. Mason: I would like to have the answer read.

(Read.)

Mr. Mason: I move to strike everything in that answer after "it was to the effect" because it is not clear from the answer whether he is reciting a conversation that actually took place, a speculation of his as to a conversation that may have taken place somewhere else, or what.

Mr. Kelaher: He is referring specifically to a conversation.

Mr. Mason: You heard the answer read.

Hearing Examiner Kolb: Are you describing a conversation that you had?

The Witness: I am describing a conversation that I had.

By Mr. Kelaher:

Q. What did Mr. Chambers—

Mr. Mason: I object to the description. It starts with "to the effect". It does not purport to be a conversation at all but the impression of the witness.

By Mr. Kelaher:

Q. State as nearly as you can what Mr. Chambers said to you.

Mr. Thompson: Before he answers that question; I think the record is becoming confused again. It is my understanding that you are still referring to the Whiz line?

The Witness: Yes.

Mr. Thompson: And this conversation was about the Whiz line?

The Witness: Let's call it the chemical line.

By Mr. Kelaher:

Q. The chemical line, which would include Mac's-It, Whiz, and so on.

A. That's right, because Jack was still using some 201 Mac's-It at that time.

Mr. Thompson: I am thoroughly confused.

Mr. Kelaher: Your Honor, I think I should be permitted to conduct this examination. I am trying to get the substance of the conversation that he had with Mr. Chambers some time in 1954.

Mr. Thompson: I am merely trying to find the subject matter of the conversation.

Mr. Kelaher: I think we will develop it.

Hearing Examiner Kolb: Go ahead.

The Witness: The subject matter was TBA products generally, exclusive of tires.

By Mr. Kelaher:

Q. Now will you please state what the conversation was?

A. Jack said to me: "Glenn, I am going to have to stop

buying from you. I have been warned that if I don't, I am going to be removed from this station. They are going to give me the ax." And two months later he got the ax.

Mr. Thompson: I move the answer be stricken. It obviously is double hearsay. The man is saying what one Jack Chambers said to him what somebody in Atlantic said to him.

Hearing Examiner Kolb: He is explaining his reasons why he can't buy that product. I think the answer is admissible. I will overrule the objection.

202 By Mr. Kelaher:

Q. At that time did you make any remarks to Mr. Chambers? Do you recall whether you answered him?

A. None that I can recall.

Mr. Thompson: May I ask whether it is the purpose of this testimony to impeach Mr. Chambers, who testified that he had no TBA difficulties whatever with Atlantic?

Mr. Kelaher: He did. I believe you were listening to a different witness this morning.

Mr. Thompson: Is it the purpose to impeach Mr. Chambers?

Mr. Kelaher: It definitely is not. It is to corroborate Mr. Chambers.

By Mr. Kelaher:

Q. Now getting back to Mr. Burt Rehill, will you state what that discussion related to?

A. TBA products, exclusive of batteries or tires.

Mr. Thompson: The TBA products exclusive of tires and batteries? And accessories?

The Witness: I have batteries, but I wasn't discussing batteries with him. I do not have tires for sale.

By Mr. Kelaher:

Q. You say batteries and accessories, including the Mac's-It and Whiz lines and your other products. Did you

sell your line in general to Atlantic and Sinclair stations prior to about 1951?

A. Did I sell?

203 Q. Did you sell them?

A. Yes, sir.

Q. What was your approximate volume of sales to those stations at that time?

A. I couldn't give you that figure without going back into the sales record.

Q. Since that time have you lost business to Atlantic and Sinclair dealers?

Mr. Mason: I object to the question such as that. He has already announced that he doesn't know what his figures are and can't give them from his head for a prior period.

Hearing Examiner Kolb: He doesn't know what he sold. He might be able to say what he lost. Objection overruled.

Mr. Mason: If he had his figures here, we would know what the facts were.

By Mr. Kelaher:

Q. I will restate the question. Taking your 1951 sales volume as 100 percent, did you increase, decrease, or remain constant with respect to your volume of sales of batteries and accessories to Atlantic and Sinclair dealers?

A. Sales to service stations are definitely down. That

I can vouch for, because I know what has given rise
204 to existing sales at the present time, because I analyze those things myself. I want to know where I am selling my merchandise. And I know that I am not selling it to service stations in general.

Q. Does that include Atlantic and Sinclair service stations?

A. Yes, sir.

Q. Would you say then that there has been a decrease

in sales volume since the peak period, or since the 1951 or 1950 level?

A. To service stations?

Q. Yes.

A. Yes.

Q. To Atlantic and Sinclair service stations.

Would you have any approximate idea of the percentage of decline since that time?

Mr. Mason: I object to an approximate idea.

Hearing Examiner Kolb: Objection overruled.

A. Service stations, 80 percent decrease.

By Mr. Kelaher:

Q. Eighty percent decrease. Does that apply to Atlantic and Sinclair stations?

A. Yes, sir.

Q. Are there any Shell service stations in your area?

A. No, sir.

205 Q. Mr. Wetzel, do you solicit the business of Atlantic or Sinclair service stations who are either opening as new stations or where a new operator is taking over?

A. Yes, sir, I do.

Q. What has been your experience with selling batteries and accessories to such stations?

A. You can't.

Q. Who supplies, based on your knowledge and observation, who supplies TBA to the stations indicated?

A. Goodyear.

Q. Is that true of the designated Goodyear supply points?

A. Yes, sir.

Q. Based on your observation and knowledge of the market, what type of advertising is done by Atlantic and Sinclair dealers with respect to TBA items?

A. Goodyear primarily. They have a valance type advertising and outdoor signs.

Q. Based on your knowledge and experience prior to 1951, what type of advertising was carried by the Atlantic stations? What type of tire, rather.

A. At that time there was more diversified TBA. As I recall, Thermoid belts and hose were in at that time.

Q. Do you recall the tires that were carried at that time?

A. Lee.

Q. Do you recall the batteries?

206 A. Some were Lee. And then others of course were buying off-brand merchandise. There were some Reading batteries, some Cadmidyne.

Q. Were there any Exide batteries displayed?

A. Yes, I believe there were. I feel sure there were.

Q. Mr. Wetzel, you may have answered this, but I don't think I asked you. Do you know approximately how many Sinclair service stations are in your marketing area?

A. I don't have any idea of the total number of Sinclair stations.

Q. Is it over 25 or 30?

A. I would say 25 to 30.

Q. Do you solicit such stations?

A. Yes, sir.

Q. How often do you solicit such stations?

A. Usually once a week. If they are smaller stations, they may be only solicited twice a month.

Q. Are you able to sell to any Atlantic or Sinclair stations on what is known as a stocking basis?

Mr. Thompson: I object to the use of the words "are you able to." Maybe he is, or maybe he isn't.

By Mr. Kelaheer:

Q. Do you sell?

A. We are speaking now of TBA?

Q. Yes.

207 Mr. Mason: Not TBA.

Mr. Kelaheer: Speaking of batteries and acces-

sories. I think the record can show that when he refers to TBA, it is noted that Mr. Wetzel does not handle tires.

Mr. Thompson: My understanding, when he speaks of TBA, is that he is speaking of the Whiz line of accessories basically.

Mr. Kelaher: He is speaking of his complete line.

By Mr. Kelaher:

Q. Will you go ahead?

A. Some isolated hard parts are stocked by some of the stations that do minor repair work.

Q. Are hard parts included in the category known as TBA?

A. No.

Q. Now with respect to the battery and accessory lines you carry, what has been your experience?

A. I don't have any stocking accounts.

Q. Are you referring now to Atlantic and Sinclair stations?

A. Yes, sir.

Q. Mr. Wetzel, you stated that you solicit Atlantic and Sinclair stations. Do you solicit them for your own complete line of so-called—batteries and accessories?

A. Well, it is a rather futile attempt on batteries. The chemical lines, yes, we try. Filters, fan belts, hoses, again fall back into a category that is very difficult to sell 208 against the competition that you have in there.

Q. But you do attempt to get that business; is that correct?

A. Yes, sir.

Mr. Kelaher: That is all, your Honor.

Hearing Examiner Kolb: Cross examine.

Mr. Thompson: May we have a five-minute recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

209 Hearing Examiner Kolb: On the record.

Cross-Examination by Mr. Thompson.

Q. Mr. Wetzel, in your business biography, in view of the fact that Shell counsel is present, shouldn't we note on the record that you at one time worked for Shell?

A. Yes, sir.

Q. And after you left Shell you started this business of your own in Chester?

A. Yes, sir.

Q. You have done very well with it, haven't you?

A. It is successful.

Q. Approximately how many accounts do you have, Mr. Wetzel?

A. How many accounts?

Q. Yes.

A. Of all descriptions?

Q. How many people do you sell to among the categories that you described?

A. Approximately 250, I would say.

Q. What is this Whiz line? Is that a full or a short line of so-called chemicals?

A. It is a full line.

Q. I am not sure if the record is clear on what you told us about that Whiz line. Am I correct that after you had developed the Mac's line—that is M-a-c-'s?

210 A. Yes.

Q. You switched your accounts to the Whiz line?

Mr. Kelaher: He is characterizing the witness' testimony. He didn't state that.

Mr. Thompson: I asked whether my understanding was correct, Mr. Kelaher.

The Witness: I didn't switch my Mac's accounts. I switched the Whiz accounts.

By Mr. Thompson:

Q. In other words, you have been selling about a dozen Atlantic dealers Mac's products, and commencing about 1951 you commenced to build up the Whiz line and sold that to them?

A. I sold the Mac's line originally. When sales on Mac's began to drop as a result of my inability to continue to sell them, I had to find a line which would replace Mac's that I could sell without competing with the existing suppliers of Mac's at that time. So I went to Whiz, and the accounts who were then buying Mac's through TBA were sold on the basis of profitability, premiums, and profit on Whiz as against Mac's-It. And they dropped the Mac's-It line and began to buy the Whiz line.

Q. That began to happen about 1951 or 1952?

A. I would say in that vicinity; yes, sir.

Q. At that time was the Whiz line promoted by Goodyear, was that a part of their TBA line?

211 A. Being included in and being promoted by I think is a definite point. It was not being promoted by. It was in the Goodyear line, but not being promoted by.

Q. But it was being sold by Goodyear?

A. It was in their line.

Q. Was it being sold by Ed Parris?

A. He had it available.

Q. And in spite of that competition from Ed Parris and Goodyear you built up the Whiz line to the same volume that you previously enjoyed on your Mac's-It line?

A. Yes, sir.

Q. You did that over a period of about two years?

A. Yes, sir.

Q. During all of that time Parris had it for sale?

A. He had it available if he wished to sell it.

Q. Are you inferring that Parris just stepped out of

that particular type of competition and let you have those dealers, or what?

A. He is not in a position to be able to compete with my salesmen for this reason: He operates a business with two people, where it requires me thirteen. In other words, my delivery service and my selling services are services that he does not need.

Q. You sell a large number of Atlantic stations at the moment, don't you?

212 A. TBA items?

Q. Yes.

A. None.

Q. Did I understand you to say that you don't sell any TBA items to Atlantic stations now?

A. Selling and buying are two different categories. They buy from me one or two filters to carry them over until Ed Parris can deliver them a case. They buy six or eight cans of merchandise to carry them over until Ed Parris can deliver a case or two cases or five cases, whatever the deal may be.

Q. How many competitors do you have in your accessories business in your part of the country?

A. Selling the same lines I sell?

Q. Selling the same types of accessories.

A. Selling the same lines, none.

Q. Selling the same types of accessories?

A. Three, in Chester.

Q. Who are they?

A. Motor Car, that is Motor Car Service; Auto Parts and Radiator; and E. B. Krausen.

Q. How about Philadelphia Wholesale Distributors?

A. Philadelphia Wholesale Distributors? They have a very few service station accounts most of which are Esso.

Mr. Kelaher: Are you referring to your marketing area?

213 The Witness: Yes.

By Mr. Thompson:

Q. What do you mean by "very few"?

A. I buy from Philadelphia Wholesale, and for that reason they respect my marketing area. Accounts that they had previous to the time that they sold to me on a jobber basis they have retained. Such accounts include G. M. Stull, which is a Ford agency; Luke Motors, which is the Oldsmobile agency; Maloney's Esso; John Chambers' Esso; —

Q. At his new Esso station?

A. At his new station.

Q. That is about the lot?

A. Chester Lincoln Mercury.

Q. No Atlantic?

A. Not to the best of my knowledge.

Q. Were you at the hearings this morning?

A. No, sir.

Q. You didn't hear Mr. Hoffman's testimony?

A. No, sir.

Q. How about Harris and Leonard? Aren't they your competitors?

A. No. I do not handle tires.

Q. How about Bowles? Are they your competitors?

Mr. Kelaher: Will you state the full name?

A. Bowes Corporation.

No, sir, they are not.

214 Mr. Kelaher: And their office?

Mr. Thompson: The principal office?

Mr. Kelaher: The one you are referring to.

Mr. Thompson: I don't know what their principal office is.

By Mr. Thompson:

Q. How about R. C. Chemical Company? Are they competitors of yours?

A. They have all off-brand merchandise and I do not

consider them a competitor because the amount of merchandise that they sell in the Chester area is negligible.

Q. How about off-brand? What do you mean? Not nationally advertised?

A. Yes, sir.

Q. How about John Stewart?

A. John Stewart's lines are specialized lines such as car wash and bulk driveway items and bulk whiteside wall cleaner.

Q. Is he a competitor of yours?

A. Not in that category because most of the items I sell are resale items which would be sold on a resale basis and not self-consumed.

Q. Is V. J. Auto Parts one of your competitors, or do they carry off-brand merchandise?

A. V. J. would be considered a competitor. However, they are on the outskirts of my territory. They are in 215 Sharon Hill. That is just about the maximum of our territory.

Q. How about Lancaster Auto Supply?

A. I don't cross paths.

Q. Do you know Frank Buckingham?

A. Yes, sir.

Q. He has a station at Second and Lloyd, Chester?

A. Yes, sir.

Q. The station John Chambers formerly had?

A. Yes.

Q. Does he buy from you?

A. TBA items, no; hard items, yes.

Q. Doesn't he buy Puralator oil filters from you?

A. On the same basis that other dealers do, in quantities of one or two to fill in until such time as he can get a shipment from Ed.

Q. Is it your impression that he buys exclusively or substantially exclusively from the Goodyear supply point?

A. I would say 95 percent of his merchandise.

Q. Do you know his station at all and what he has for sale there?

A. It has been possibly three or four months since I have been in that territory, or in Frank's station. But basically I have some idea of some of the merchandise that is in there.

Q. Would you say I was exaggerating if I suggested to you that he had eight independent suppliers besides yourself?

216 A. No, that is very possible, but what is he buying from those eight suppliers?

Q. Perhaps you could tell me, sir, since you are on the stand.

A. You tell me who the suppliers are and I can probably tell you what he is buying.

Q. Delaware County Auto Parts. What do you suppose he buys from them?

A. Delaware County Motor Parts?

Q. Auto parts.

A. Well, it is possible that he bought some DuPont anti-freeze from them.

Q. How about the DuPont chemical line?

A. It is possible that he may have bought some DuPont chemicals. I think they do handle it on a sub-jobber basis.

Q. How about Zerone and Zerex?

A. I mentioned that.

Mr. Kelaher: Objection, your Honor.

Mr. Thompson: Why?

Mr. Kelaher: Zerone and Zerex aren't part of the Goodyear TBA line. Anti-freeze is not a part of the Goodyear TBA.

Hearing Examiner Kolb: Is it or isn't it?

Mr. Kelaher: It is not. Anti-freeze is not a part of the Goodyear TBA.

217 Mr. Mason: I want to hear his Honor's ruling on this. I have a motion to strike.

Hearing Examiner Kolb: You say that anti-freeze is not—

Mr. Kelaher: That is right. The records will indicate that. I think counsel will concede that point.

Mr. Thompson: That is correct.

Mr. Ballard: It is correct as far as Atlantic is concerned. We don't know any more than that. We don't handle—

Mr. Kelaher: That is what I am referring to. This is an Atlantic station?

Mr. Thompson: Oh, yes.

Hearing Examiner Kolb: The objection will be sustained.

Mr. Mason: On that basis, your Honor, I move that all previous testimony with respect to Whiz be stricken because that is not a part of the Goodyear TBA line.

Hearing Examiner Kolb: That is a comparable product that is put out by Goodyear. Waxes, polishes, radiator solvents and so forth.

Mr. Mason: Whiz is not a part of the Goodyear TBA line, and there has been a good deal of testimony that he has lost business to Goodyear with respect to Whiz.

The Witness: That testimony was dated.

Hearing Examiner Kolb: As I understand, anti-
218 freeze is not a TBA product. The Whiz products are TBA products so far as they are comparable.

Mr. Mason: As I understand it, anti-freeze is a TBA product but is not part of the Goodyear TBA line.

Hearing Examiner Kolb: Motion will be denied.

By Mr. Thompson:

Q. Do you know from your observation of the Buckingham station whether he buys from the Bowes Corporation oil filters and stocks them?

A. From the Bowes Corporation?

Q. Yes.

A. It would be impossible for me to say.

Q. He does stock Bardahl, does he not?

Mr. Kelaher: Objection. Bardahl is not a TBA item. It is a motor oil.

Mr. Thompson: You are correct.. I will withdraw that question.

By Mr. Thompson:

Q. Did you say you didn't know the R. C. Chemical Company?

A. I know that.

Q. Does Mr. Buckingham buy part of his so-called chemical line from the R. C. Chemical Company?

A. That would be difficult for me to say. I don't know.

Q. I don't want to be too prolonged on one station. You of course do sell Conneen, Chester Pike and Fairview Road?

219 A. Yes, sir.

Q. A large number of other suppliers do the same thing, don't they?

A. I couldn't say. I know that I sell him. I don't know what my competition sells him.

Q. How about Earl Connors?

A. At Ninth and Flower?

Q. Yes.

A. We sell Connors hard items, yes.

Q. How about DiFelice, at Ridley Park?

A. Yes, sir; I sell him hard items.

Q. You also sell him such things as Purolator filters, don't you?

A. Yes, sir. There is an interesting situation there. Perhaps you would be interested in hearing it. I sold him a bonanza deal and he was told to send it back to me.

Q. By whom?

A. TBA distributor.

Q. Did he?

A. He refused to. There were eight filters out of the bonanza and he told him to take them out of the new bonanza he was going to get from TBA, take them out and send them to me.

Q. The fact is that this man buys from about eight different suppliers, isn't that true?

A. That I couldn't say. I don't know where he buys.

220 Q. How often do you go to see him?

A. Once a week.

Q. You don't know what he buys and stocks?

A. I know the merchandise he stocks.

Q. Do you know how many sources of supply he has?

A. I know that he buys hard items from Eddy Davis, and he buys hard items from myself. Where he is buying his chemicals other than Ed Parris I couldn't hazard a guess.

Q. I think you mentioned Drozdowski before?

A. Yes, sir.

Q. He still buys quite a bit from you, doesn't he?

A. Hard items, yes.

Q. And from a lot of other people? I mean he buys accessories from a lot of people, doesn't he?

A. That I could not say.

Q. He buys Purolator and AC filters from you?

A. No, sir, he does not.

Q. How about Sam Dugross?

A. No, sir. I do not have him on the books.

Q. He is not on your books at all? He is a customer of V. J. Auto Parts.

A. I don't know the gentleman.

Q. You don't know him?

A. No, sir.

Q. Is Main and Ridge, in Darby, out of your area?

221 A. Yes.

Q. How about Gillipan, Edgemont Avenue and Maple, Brookhaven?

A. That is Al Kahler's son-in-law?

Q. Yes.

A. Yes, he buys hard items from us.

Q. Frank Lancaster, Chester?

A. Hard items.

Q. Also Purolator?

A. I haven't sold Frank any more than two Purolators at a time in the past year and a half.

Q. He buys from C. A. Powers, doesn't he?

A. That I don't know.

Q. Delaware County Auto Parts?

A. No.

Q. You don't know who his suppliers are?

A. No.

Q. How much do you know about Mr. Mann's business at Haverford and Brookhaven Road?

A. I don't know.

Q. Is he one of your accounts?

A. No.

Q. Bill McKee, at West Chester Pike and Newton Road?

A. I sold Bill McKee hard items when he was at the station Al Kahler's son-in-law now has. I haven't seen him since he moved to Newtown Square.

222 Q. Do you know who does sell him?

A. I couldn't tell you now.

Q. How about Joseph Raffia? Is he one of your accounts?

A. He is in our marketing area but doesn't buy from us.

Q. You sell quite a bit to both Rehills, don't you?

A. Hard items, very definitely; mufflers, tail pipes.

Q. That is all? That is all you sell them?

A. Yes.

Q. Are your sales primarily for cash or credit to the service stations?

A. About 75 percent charge and 25 percent cash.

Mr. Thompson: May I have a one-minute recess to consult counsel?

Hearing Examiner Kolb: Yes.

(A brief recess was taken.)

223 Mr. Thompson: I have no further questions.

By Mr. Mason:

Q. Mr. Wetzel, when did you first learn that you were going to testify here?

A. Is there a date on that subpoena?

Q. It was by virtue of the subpoena that you first learned?

A. Yes.

Q. Had you been asked previously whether you would be willing to testify?

A. Yes, sir.

Q. Who asked you?

Mr. Kelaher: Objection. I can't see any relevance to this line of questioning.

Mr. Mason: This is cross examination.

Hearing Examiner Kolb: The objection will be overruled.

Mr. Mason: Read the question.

(Question read.)

The Witness: I was asked by the Federal Trade Commission.

By Mr. Mason:

Q. Did the Federal Trade Commission happen to be represented by a person with a name at that time?

Mr. Kelaher: Objection, your Honor. I think he has answered the question. Any representative of the 224 Federal Trade Commission would be acting in an official capacity. I see no reason for putting names in the record.

Hearing Examiner Kolb: He can testify as to who he talked to.

By Mr. Mason:

Q. Who was it?

A. Mr. Kelaher, I don't believe I talked to you the first time, did I? There were three gentlemen, were there not, originally?

Mr. Kelaher: That's right.

By Mr. Mason:

Q. When did this original conversation take place?

Mr. Kelaher: I think, in order to get the record straight, if he wants to go into it, I can give him the dates, going back a few years, when the Federal Trade Commission representatives called on him.

Mr. Mason: I don't intend to question him very long.

Hearing Examiner Kolb: Let him go along.

The Witness: I would say it probably has been sometime this year. The very early part of this year, I believe. The exact date I couldn't tell you.

By Mr. Mason:

Q. At this original conversation, were either of these two gentlemen in the room present?

225 A. This gentleman here was present.

(Indicating Mr. Kelaher.)

Q. At that time did you make available to the members of the Federal Trade Commission any of your books and records?

A. Yes, sir.

Q. Could you just tell us which books and records they were?

A. My purchases.

Q. And did they have the figures on these purchases as a result of this conversation? Did they take notes?

A. Notes were taken, yes.

Q. Let me ask you this: How would you feel about letting the other side have a chance to look at your records?

A. No objection whatsoever.

Q. So we can go and take a look at your records?

A. Sure. With my permission.

Q. At a time—

A. At my permission. I don't want you going into my place of business without my permission. I will be there at the time.

Q. Of course. We would like to work out such reasonable arrangements as we could. Did you, at this time, make any statements in writing?

Mr. Kelaher: At which time are you referring to?

Mr. Mason: At the first occasion.

The Witness: In writing? No.

226 By Mr. Mason:

Q. Have you ever at any time given any member of the Federal Trade Commission a statement in writing?

A. Not in writing, no.

Mr. Mason: I have no further questions.

Mr. Kelaher: I have some redirect, Mr. Examiner.

Redirect Examination by Mr. Kelaher.

Q. In order to get the record straight on the sequence of brand names with respect to Mac's-It, Whiz, et cetera, who was the original supplier of the Mac's-It line in your marketing area?

A. The original supplier?

Q. The original jobber-supplier.

A. From 1940 until 1946—

Q. I am talking about the period since you—

A. Since I have been it? I was.

Q. Just give us the date approximately, when did you begin to develop it? I think you have done it already.

A. 1946 actually when we first went in business. We had the line made available to us I would say in late 1946. 1947 was the development year.

Q. When was the Mac's-It line taken on by the Goodyear TBA supply point; Mr. Parris, first?

A. The exact date would be hard to say, Mr. Kelaher. I don't know.

Mr. Thompson: It appears of record.

Mr. Kelaher: I think there is a little confusion on it.

By Mr. Kelaher:

Q. Was it taken on as a part of the Goodyear TBA line?

A. Yes. It appeared in the Goodyear TBA catalog, the product appeared in there, and it was available to the distributor. At what time it became available I couldn't tell you. It may have been available as early as 1946. It may not have been available until 1948 or 1949. But it did appear in the catalog at the time that I began to lose business.

Q. You are referring to the Goodyear catalog?

A. Yes, sir.

Q. Did that appear in the Goodyear TBA catalog when Atlantic dealers originally began to purchase the Goodyear TBA line?

A. I believe it did.

Q. Then you stated, in the sequence of events, that you began to sell the Whiz line?

A. Yes, sir.

Q. To Atlantic dealers and Sinclair dealers?

A. Yes, sir.

Q. With respect to your loss of the Whiz line of business, was that business lost to the Whiz, a Whiz line 228 carried by the Goodyear TBA supply points?

A. Yes, sir.

Q. When did they begin to sell the Whiz line?

A. They began to take orders on it after I had sold it.

Q. Although it had been in the Goodyear TBA line prior to that?

A. Yes, sir.

Q. In response to a question by Mr. Thompson, he alluded to the fact that you had sold approximately 12 Atlantic stations at the peak. Would you state whether that is correct or incorrect?

A. I would say it is closer to 20.

Q. Approximately how many Sinclair stations did you sell at your peak?

A. Fifteen to twenty. Probably forty, close to forty stations involved in both categories.

Q. You have testified that your sales volume on Mac's-It line and on the Whiz line ranged from say 6,000 to 7,200 dollars, approximately?

A. Yes, sir.

Mr. Thompson: I object to that and suggest that Mr. Kelaher write his brief at the proper point. This is just repetitions.

Mr. Kelaher: It isn't.

Hearing Examiner Kolb: The objection will be over- 229 ruled.

By Mr. Kelaher:

Q. I ask you now if that is considered a large sales volume on one brand of waxes and polishes?

A. For that particular marketing area, it is a good volume.

Q. Would that apply both to the Mac's-It volume and the Whiz volume?

A. Yes, sir.

Q. You were asked on cross-examination about a number of Atlantic service station dealers. I am going to ask you about each of these dealers to the best of our ability to take notes on them. There may be some confusion on names.

The first one you were asked about is a man identified as Frank Buckingham, I believe?

A. Yes, sir.

Q. What main line of TBA does that Atlantic dealer carry?

A. DuPont. You mean, as far as chemicals? He carries Goodyear tires, Goodyear batteries, Goodyear belt and hose line. I believe Frank carries Purolator, I am not sure. They have a couple of filters available to them.

Q. Who is the principal supplier of TBA products to this dealer?

A. Parris.

Q. What brands of TBA are advertised by Mr. Buckingham?

A. Goodyear.

230 Q. Does that include a Goodyear valance, a window valance, for example?

A. Yes, sir, I believe it does.

Q. Is there an outdoor sign?

A. I couldn't be definite on that. Most of them do.

Q. The next one you were questioned about was a Mr. Conneen. What brand of tires does Mr. Conneen carry?

A. Goodyear.

Q. What brand of batteries does he carry?

A. Goodyear.

Q. Who is his principal supplier of accessories?

A. Parris.

Q. And that is the Goodyear TBA line?

A. Yes, sir.

Q. Goodyear accessory line. What brand of TBA does Mr. Conneen advertise?

A. Goodyear.

Q. The next one—

Mr. Thompson: Do you know the answer to these questions?

Mr. Kelaheer: I think I am entitled to develop this in my own way.

Mr. Thompson: Not unless he knows what he is talking about. I think you ought to develop that he knows the answer.

231 By Mr. Kelaheer:

Q. These are based on your own knowledge?

A. Yes, sir.

Mr. Thompson: Are these based on your own knowledge?

The Witness: I am in Conneen's station every week.

Mr. Thompson: I think his memory has improved remarkably since cross-examination.

Mr. Kelaheer: I think that is an unfair statement. He answered counsel's questions very clearly.

Mr. Thompson: I do not withdraw the statement.

Mr. Mason: I join in the statement.

By Mr. Kelaheer:

Q. You were asked about a dealer by the name of Earl Connors?

A. Yes.

Q. Do you call on Mr. Connors' service station?

A. No, sir.

Q. Do you have any reason to know by observation what line of TBA he carries?

A. Unless it has changed since George Curney relinquished the station to Connors, it will be Goodyear.

Q. When was that station relinquished? Approximately?

A. I would say about 90 days ago. Perhaps four months.

Q. Up to that time they carried Goodyear TBA line?

A. Yes, sir.

232 Q. And, based on your observation of that station, do you know what brand of TBA was advertised?

A. It was Goodyear at that time.

Q. When you say Goodyear, you are also referring to waxes and chemicals which may be in the Goodyear line, is that right?

A. Yes, sir.

Q. And other accessories?

233 Mr. Mason: And others that may not be in the Goodyear line but sold by the Goodyear distributor.

By Mr. Kelaher:

Q. Let me ask you with respect to non-sponsored brands which are not in the Goodyear line. Do you see advertisements of such?

A. Mr. Kelaher, that is hard to say. These flash items come into the picture and go out. Somebody gets a demand, we will say, for Turtle Wax and he gets five, six, or seven calls for it. He is liable to step out, buy a case of it, stick a banner up. If it begins to die off, the banner comes down, and the merchandise remains on the shelf until such time as it is eventually sold. That does come into the picture and it does change.

Q. With respect to window valances and outdoor signs, what identification is used? In the Atlantic stations that you have so far referred to.

A. The ones that I am calling on weekly, in the upper territory, DiFelice, Coneen, Crawford-Bryant and those boys, definitely have Goodyear advertisements. Their window valances are Goodyear.

Q. Without going into each individual station mentioned

by counsel for respondent, I would like to ask you, based on your knowledge and experience, what the main line of TBA is that they carry—that each of them carries?

234 A. Goodyear in the rubber line, which constitutes the belts, hose, and rubber. Goodyear in the batteries. Dupont in the chemical lines. Purolator or AC in the filter lines.

Q. Would you say in general that they carry the Goodyear TBA line?

A. Yes, sir.

Q. With respect to all these Atlantic dealers what is their primary advertising, window valances and outdoor signs and so on?

A. It falls right in the same category as their TBA supply.

Q. And you're referring to the Goodyear TBA line?

A. Yes, sir.

Q. With respect to all these dealers, in order to clarify the record, I believe you stated—let me ask you: Do you sell hard parts to all these accounts?

A. Not all of them.

Q. Do you sell batteries and accessories on a regular basis to these accounts?

A. Occasionally we will sell a battery. It is during the daylight hours and they happen to be out of one particular number and they have an immediate sale and they have a car that they can hold it long enough to run to the store and pick it up or give us a call and ask us if we can shoot one battery to them. In other words, what we term shotgun delivery and shotgun sale.

235 Q. Would it be fair to say that you sell them on a fill-in basis, to these Atlantic dealers?

A. It wouldn't even be fill-in. It is sporadic. You may go three months and never sell them a battery, and then

sell them a battery today, one tomorrow, and then not sell them one for six months.

Q. With respect to accessories, does that same answer apply?

A. Yes. It holds in chemicals on the basis of a half dozen cans to carry me over. That has been going on for several years.

Q. And the primary supplier of all these Atlantic dealers is Mr. Parris?

A. Yes, sir.

Q. You were asked a question about Mr. DiFelice?

A. Yes, sir.

Q. You made reference in your answer to a bonanza deal. Would you explain what the so-called bonanza deal is?

A. This spring Purolator brought out an assortment of filters, constituted approximately a \$35 investment. For another \$1.95, as I recall, there was a set of dishes in there, service for four. It was all packaged in a unit. Dishes and filters packaged in a unit.

It so happened that I received delivery before Ed Parris received delivery, and so wherever there were Purolators

I tried to sell the bonanza deal. I sold the bonanza 236 deal to Gino Di Felice. Approximately three weeks after I had sold it to him I stopped in and he said, "You got me in a mess of trouble with this bonanza deal." I said, "What is the matter?" He said, "I am supposed to send this thing back to you, but I refused to do it because there were nine filters sold."

I said, "If it will give you any heartaches, send it back." He said he wouldn't send them back, he would keep them.

Q. Did he indicate who asked him to send them back?

A. Yes.

Q. Who?

A. The salesman who was calling on him.

Q. Who was the salesman?

A. The Atlantic salesman.

Q. You were asked on cross-examination about being employed by Shell. Would you please state what your position was with Shell?

A. Shell?

Q. Shell Oil Company?

A. My last employment with Shell, post-war, was industrial lube oil engineer, State of Virginia.

Q. Are you a graduate chemical engineer?

A. Yes, sir.

Mr. Kelaher: That is all.

237

Recross Examination by Mr. Mason.

Q. Mr. Wetzel, I want to get clear in my own mind this business of the dates when you reached the peak of your sales of Whiz. Am I correct in recalling that you said it was 1948 and 1949?

A. Not Whiz. It was Mac's first.

Q. Am I also correct in recalling that it was about that time that you saw Mac's appear in the Goodyear TBA catalogue?

A. It was at the time of the beginning of the decrease that Mac's came in and was available to the service station for the TBA distributors.

Q. I am trying to fix dates. That was about 1950? 1948, 1949?

A. That is possible. I would rather take a look at my records and show you when my purchases decreased and then I can better tell you the exact date.

Q. We would have done a lot better if we had had your records here.

One thing I want to make clear, do you realize there was no arrangement between Goodyear and Atlantic back in the period that you were testifying about?

A. That I couldn't say. I don't know—

Mr. Kelaher: Objection, your Honor.

Mr. Mason: This is a matter of record. I want to
238 ask the witness whether or not he had that in mind
when he was testifying.

Mr. Kelaher: I think he is mischaracterizing his testimony.

Hearing Examiner Kolb: It is cross-examination. Objection overruled.

By Mr. Mason:

Q. Did you have in mind the fact that there was no arrangement between Goodyear and Atlantic?

A. Let me put it this way—

Q. Just answer my question.

Mr. Reporter, would you read the question?

(Question read.)

By Mr. Mason:

Q. Let me amend the question to add: When you testified with respect to the dropping off of your sales of Mac's. You understand the question?

A. In other words, you would like me to quote a date at what time Mac's sales decreased?

Mr. Mason: Mr. Reporter, can you read the question as amended?

(Question read.)

A. Was I aware of it?

By Mr. Mason:

Q. Yes. At the time you testified earlier?

239 A. My earlier testimony I think if you check, will be approximately 1951 as a drop-off period. I think that is what I said. I feel pretty sure because it was in that vicinity that I changed from Mac's to Whiz, and then

the build-up period on Whiz was from say late 1951 or early 1952 through the 1952-53 era.

Q. Did you ever look in the Goodyear catalogue to see whether Whiz was in it?

A. It isn't in it now.

Q. Was it ever in it?

A. Oh, yes.

Q. When was it in it?

A. I would say the Whiz products appeared from probably 1950 to 1953.

By Mr. Mason:

Q. Would it refresh your recollection if I told you that it is the understanding of Goodyear personnel with me here that the only Whiz product that has ever been advertised was Motor Rhythm, and that appeared in the catalogue from 1952 to 1954?

A. This I know: Mr. Bittenbender, of Whiz, definitely called on Ed Parris and I know that Ed Parris had available the entire Whiz line. To the best of my knowledge Mr. Bittenbender, as I recall talking to Mr. Bittenbender, all that material did come from Goodyear.

Q. So that is your understanding. But it could be 240 possible that you are wrong?

A. It is pretty difficult to say what is in what catalogues or what year. Do you know what was in Sears-Roebuck in 1953?

Q. In other words, you are not sure of your testimony?

A. Well, I know that it was made available to the dealers through Ed Parris.

Q. But you do not know whether or not it was a part of the Goodyear TBA program with Atlantic?

A. No, I couldn't say absolutely.

Mr. Mason: Thank you.

No further questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Wetzel. Thank you.

(Witness excused.)

242 Hearing Examiner Kolb: On the record.

Mr. Kelaher: Mr. Examiner, counsel for respondent Atlantic, and counsel supporting the complaint, have entered into a stipulation with respect to the testimony of appropriate officers and employees of Atlantic if called as witnesses in this matter.

It is our understanding that this stipulation will make it unnecessary to call officers and employees of respondent Atlantic insofar as we know at this time. However, it is clearly understood that this does not foreclose counsel supporting the complaint from calling such officers and employees of respondent Atlantic if circumstances later dictate.

I would also like to state that counsel for respondent Atlantic have cooperated fully in preparing this stipulation and that it will greatly expedite the trial of this matter.

Hearing Examiner Kolb: Let the record show that the stipulation was executed by both parties, and if satisfactory it will be read into the record at this time.

Mr. Ballard: It is satisfactory to be read into the record as far as Atlantic is concerned.

Mr. Kelaher: "United States of America. Before Federal Trade Commission. In the Matter of The Good-
243 year Tire & Rubber Company, The Goodyear Tire &
Rubber Company, Inc., and The Atlantic Refining Company, corporations. Docket No. 6486.

"Stipulation re testimony of the Atlantic Refining Company personnel.

"Counsel for respondent, The Atlantic Refining Company ('Atlantic'), and counsel supporting the Complaint agree and stipulate that if appropriate officers and employees of Atlantic were called as witnesses by counsel supporting the Complaint in this proceeding, such witnesses would testify as follows, and that the following may be accepted by the Commission for the purpose of its determination and order herein as if such witnesses had so testified and in lieu of such testimony. The statements set forth below are made solely for the purpose of this proceeding or any review thereof, and for no other action, case or proceeding.

"1. Organization of Domestic Sales Department.

"1.1 Atlantic markets its petroleum products in the Middle Atlantic States (including parts of Ohio and West Virginia), New England (not including Maine), and the Southern Atlantic States. For administrative purposes this marketing territory is divided into six regions. CX 82A-C and 83A-C indicate the boundaries of these regions as of August 1952, and there have been no material changes

since that date. Within the boundaries of the various 244 regions are large areas such as the State of Georgia (except for metropolitan Louisville, Augusta and Savannah) and the State of South Carolina (except for metropolitan Rock Hill and Dillon) in which Atlantic sells only to distributors and not to dealers, and other large areas such as New York, N. Y., and substantially the entire northern half of the State of Georgia where Atlantic has no outlets at either the distributor or the dealer level.

"1.2 Sales of Atlantic products to petroleum retail dealers and petroleum wholesalers are made by Atlantic's Domestic Marketing Department (formerly called 'Domestic Sales Department'). The organization of this department for the period 1949 through 1956 is shown in CX 81A-F.

"1.3 Within the Domestic Marketing Department there is a Regional Manager for each of the six sales regions. Such Regional Managers are entrusted with broad authority to implement the Company's over-all sales policies within their regions.

"1.4 The regions are subdivided into districts consisting in general of a city or other marketing center and the surrounding territory. A District Manager reporting to the Regional Manager is in charge of each district. The present districts are as follows:

"New England

245 Providence
 Springfield
 Hartford
 Boston
 New Haven

"New York

 Syracuse
 Southern Tier
 Albany
 Rochester
 Watertown
 Buffalo

"Phila.-New Jersey

 Phila.-Sub.
 South Jersey
 North Jersey

"Eastern Pennsylvania

 Wilmington
 Allentown
 Wilkes-Barre
 Harrisburg
 Reading
 Williamsport

"Western Pennsylvania

Pittsburgh
Altoona
Greensburg
Erie

"South

Charlotte
Baltimore
Richmond
Jacksonville
Miami

"1.5 Each district has a staff of salesmen of various types reporting to the District Manager. The number of salesmen differs in accordance with the number and importance of customers and potential customers in the 246 district. As of April 30, 1956, there were in the aggregate approximately 394 salesmen calling on dealers and distributors, an average of about 13 salesmen per district. The designations, approximate numbers and functions of these salesmen were as follows:

Type	Approximate No.	Function
Promotable dealer salesman	133	Sells Atlantic products and promotes recommended TBA to 'promotable dealers', which term includes lessee dealers and contract dealers interested in complete service station operation.
Dealer salesman	25	Sells Atlantic products and promotes recommended TBA to dealers not covered by promotable dealer salesmen (usually in areas of sparse distribution) or to special groups such as car dealers in other areas.

Type	Approximate No.	Function
General salesman	54	Sells Atlantic products and promotes recommended TBA to dealers not covered by promotable dealer salesmen or dealer salesmen, and also sells Atlantic products to smaller Commercial accounts.
247		
Service salesman	147	Teaches dealers and their employees merchandising techniques and how to perform the services normally performed by first class service station operators. This teaching involves both petroleum products and TBA. For teaching purposes the salesman uses the TBA on hand at the station.
Wholesale salesman	35	Sells Atlantic products and promotes recommended TBA to distributors and wholesale dealers.

All Atlantic salesmen are paid on a salary basis. Promotable dealer salesmen also receive extra compensation based upon percentage gains in purchases of gasoline, motor oil and recommended TBA (and also over-all gains) by those of their assigned dealers who have been in operation for a minimum of 12 months. Extra compensation for gasoline gains ranges from \$4.70 per three months for 248 a 2 percent gain on deliveries of 299,999 gallons or less in the three-month period (as compared with the corresponding period in the preceding year) to \$233.94 per three months on gains of 21 percent or more on deliveries of 3,000,000 gallons or more in a like period. Extra compensation for motor oil, TBA and for over-all gains are computed on a similar basis taking into account the quan-

tity delivered and the percentage gain in the specified period.

"1.6 Within the Domestic Marketing Department there is a TBA Section Manager who is the staff person responsible for implementing TBA policies on a company-wide basis. Within each region the TBA Coordinator, reporting to his regional manager, is the staff person responsible for implementing Atlantic's TBA policies in his region. He advises, informs and assists the districts in his region in developing their TBA program. The current TBA coordinators and the regions to which they are assigned are as follows:

TBA Coordinator	Region
H. H. Roller	New England
L. K. Maisel	New York
W. J. Jackson	Philadelphia—New Jersey
G. E. Fearn	Eastern Pennsylvania
R. E. West	Western Pennsylvania
E. M. Singleton	Southern

"1.7 The Atlantic employees readily identifiable as being concerned with TBA and the approximate percentage of time spent by them in that connection are as follows:

(a) Employees devoting their full time to TBA:

Number	Classification
1	Manager, TBA Section
1	Field Assistant, TBA Section
1	Office Assistant, TBA Section
6	Region TBA Coordinators

(b) Salesmen concerned with TBA:

"The different types of salesmen described in paragraph 1.5 devote different percentages of their time to TBA, the largest percentage being devoted by the promotable dealer

salesman and the smallest by the general salesman. On an overall basis it is believed that between 10 percent and 20 percent of these salesmen's time is devoted to TBA.

(c) Additional officials of the Domestic Marketing Department concerned with TBA:

"The officials listed below, together with their respective subordinate executive, administrative, secretarial, accounting and sales supervisory personnel, devote a portion of their time to TBA, the exact amount of which cannot be determined. For relationships of the various divisions and sections as of 8/15/56, see CX 81A. Certain of these relationships have since been revised.

250 Number

Classification

- | | |
|----|---|
| 1 | General Manager, Domestic Marketing Department. |
| 1 | Assistant General Manager, Domestic Marketing Department. |
| 1 | Manager, Product Sales Division. |
| 1 | Manager, Marketing Operations Division. |
| 1 | Manager, Service Station Section, Operations Division. |
| 1 | Manager, Sales Promotion Section. |
| 1 | Manager, Advertising Section. |
| 1 | Manager, Credit & Collection Division. |
| 1 | Manager, Real Estate Division. |
| 1 | Manager, Market Research Division. |
| 6 | Managers, Marketing Regions. |
| 6 | Managers, Region Sales Groups. |
| 7 | Region Direct Marketing Managers. |
| 29 | Managers, Marketing Districts. |

"2. Leases, Contracts and Relationships with Customers.

"2.1 The designation and description of customer classifications for Atlantic's Domestic Marketing Department as of August 1952 and the percentage of total gasoline sales for 1951 are set forth in CX 84A-C. The corresponding designations at present and the corresponding percentages of total gasoline sales for 1955 are:

251 Designation in 1952	Present Designation and Percentage of Total Gasoline Sales for 1955
I	Company-operated station, 0.1 percent
II	Lessee dealer, 39.1 percent*
III	Contract dealer, 18.1 percent*
IV	Commercial account, 16.6 percent
V	Wholesale dealer, 1.1 percent*
VI	Distributor, 24.0 percent*
VII	Jobber, less than 1.0 percent

* Commissions are paid under the sales commission plan on purchases by these classes of customer.

"2.2 There are no leases or contracts between Atlantic and the managers of company-operated stations. As of September 30, 1956, there were 7 permanent company-operated stations and 39 temporary company-operated stations. The latter are stations intended for operation by a lessee which are temporarily operated by company employees while the lessee is being selected or trained.

"2.3 Typically, the documents between Atlantic and lessee dealers are as follows:

"(a) Dealer lease on Form B-3191.

"(b) Accompanying document referred to as 'Eleven Point Lease Letter', not identified by number or title.

"(c) Equipment and apparatus inventory, Form B-3191A.

"(d) Agreement covering purchase of Atlantic 252 automotive lubricants, Form B-3105.

"CX 88A-1 through 88D, respectively, are current versions of the foregoing forms.

"2.4 Prior to August 1956 the lease form in use in the New York region contained different provisions as to the determination of rentals in paragraph 4 from the lease in use in other regions, the New York form being designated as B-3191Y. (CX 88E-1—E-2) Prior to August of 1954 provisions respecting the credit card privilege of lessee dealers were contained in a separate agreement, Form B-3194 (CX 89, 89A), instead of in paragraph 14 of B-3191 as at present.

"2.5 Typically, the documents between Atlantic and contract dealers are as follows:

(a) Equipment loan and sale of motor fuel agreement, Form B-3107A (CX 90A-B, 90-C-D).

(b) Agreement covering purchase of Atlantic automotive lubricants, Form B-3105 (CX 91, 88D).

(c) Credit card agreement, Form B-3194 (CX 89, 89A).

(d) Loaned Equipment Contract, Form B-42 (CX 97, 97A).

"2.6 Typically, gasoline distributors enter into an Authorized Distributor's Agreement, Form B-3143 (CX 95A-C, 95D-F), and an Authorized Distributor's Agreement relating to Atlantic Automotive Lubricants, Form 253 B-3119 (CX 96, 96A); certain distributors enter into a Commission Distributors Consignment Agreement, not identified by number (CX 98H-L); wholesale dealers selling gasoline do not normally enter into any kind of contract with Atlantic; certain wholesale dealers selling gasoline enter into a Commission Agent Consignment Agreement, not identified by number (CX 98M-Q); and gasoline jobbers enter into a Bulk Sales Agreement, Form B-3137 (CX 98R-T).

"2.7 The following exhibits are forms used in or prior to 1952, the present status of which is indicated:

CX No.	Form Designation	Status
87	B-3191B	Discontinued.
92A-B	B-3121	Has always been and still is used with commercial accounts only.
93A-C	Commission Agreement Form	Replaced by Contract Sales Agreement Form.
94A-D	Commission Dealer Agreement Form	Replaced by Contract Sales Agreement Form.
97	B-42	Originally used primarily for commercial accounts; used today also for certain non-gasoline equipment of some dealers.
98A-G	Commission Distributor Agreement	Use discontinued about 1950; some agreements may still be in effect.
254.		

The forms referred to in the preceding and following paragraphs have been revised from time to time. In revising forms, Atlantic follows the general practice of indicating the year and month of the revision immediately following the form number, and thereafter uses the revised forms when leases and agreements in the old forms expire. Thus, at any particular time agreements may be outstanding in several different versions.

"2.8 Form B-3188 'Contract Sales Agreement—Trained Dealers' (CX 98U-V) is the form of agreement which, on occasion, is entered into between Atlantic and newly-trained dealers. This agreement, which provides in effect for sales of gasoline (but not other products) on consignment, is in addition to the regular B-3191 lease and is for a maximum period of 9 months, with an option for cancellation by either party at the end of 6 months.

"2.9 Where extraordinary competitive conditions adversely affect normal dealer operations, Atlantic is willing to enter into a Contract Sales Agreement, not identified by number (CX 98W-X), which also provides in effect for sales of gasoline on a consignment basis.

"2.10 With the exceptions noted in paragraph 2.8 and 2.9 above, Atlantic does not sell to dealers on what might be described as a consignment basis.

"2.11 On April 1, 1953, Atlantic adopted a long-term dealer lease policy under which any lessee dealer who has established a record of two years of satisfactory operation is eligible for a 3-year lease on Form B-3191 containing an exclusive right on the dealer's part to cancel without cause as of any annual anniversary date on 60 days' notice, the rental remaining the same during the entire 3-year period. At the same time, Atlantic adopted the Eleven Point Lease Letter referred to in paragraph 2.3 (CX 88B) defining standards of satisfactory operation by lessee dealers. Prior to April 1, 1953, leases were customarily on a year to year basis. Under the present policy the salesmen report to the district manager what they consider instances of unsatisfactory operation by lessee dealers, and the district manager decides whether to issue a warning letter.

"2.12 In the years 1950 to 1955, inclusive, Atlantic made loans to its distributors for working capital or to finance the acquisition, construction or improvement of facilities as follows:

Year	No. Distributors Borrowing (non-cumulative)	Total Amount Lent
1950	1	\$ 22,000
1951	1	10,000
1952	1	25,000
1953	0	0
1954	5	257,000
1955	0	0

256 "Loans are not made to distributors' customers.

Loans are made to contract dealers for the same purposes as loans to distributors, but the number and amounts of such loans could not be determined without a costly and time-consuming survey.

"As of the specified dates, loans to lessee dealers, primarily to finance the acquisition of equipment, tools and inventory, were outstanding as follows:

As of These Dates	This Number of Lessee Dealers	Owed This Much Money	Against Loans Which Originally Amounted to
12/31/51	418	\$140,834	\$195,401
12/31/52	362	425,403	650,002
12/31/53	420	539,520	875,792
12/31/54	412	526,186	856,376
12/31/55	418	481,170	827,817

"Atlantic's policy is to charge interest on all loans. The handling of recommended TBA is not a requisite for obtaining a loan, and no records are kept as to whether distributors or dealers who obtain loans do or do not sell recommended TBA.

"2.13 Atlantic provides a five weeks' training course in service station operation for prospective lessee dealers (who, upon completion of the course, are signed as lessees as stations become available for them) and also for contract dealers. On occasion, distributors' dealers attend these courses. Also, in many cases, an Atlantic

Service Salesman works with the newly-trained dealer during the first two weeks of actual operation. In addition, there is a program of in-station training for all established dealers conducted by Atlantic Service Salesmen, including clinics for dealers' employees.

"In these training courses and clinics recommended TBA items are used as 'props'.

"The five-week dealer training course involves a total

of 180 hours, which are divided approximately equally between classroom and on-the-job instruction.

“Technical subjects make up the major portion, entailing at least 98 hours and including such topics as:

- The Internal Combustion Engine
- Lubrication Practice
- Wheel Bearing Packing Procedure
- Servicing Electro-Hydraulic Mechanisms
- Car Waxing and Polishing Methods
- Servicing Automatic Transmissions
- Tire Changing and Repairing
- Electrical System Servicing
- Cooling System Servicing

“Courses on business management account for about 36 hours and cover such topics as bookkeeping, taxes, employee selection and training, and techniques for evaluating business progress.

“Training in salesmanship and sales promotion covers a minimum of 26 hours and relates to solicitation, market surveys, displays and advertising.

“Many of the courses, including some already referred to, relate to TBA, but without reference to any particular brand, except as props may be used in demonstrations. They cover the following: a description of what TBA comprises, and its economic importance to the dealer; the techniques for selling TBA, including direct solicitation, merchandise display and advertising; methods of installing and servicing the various types of TBA; selling TBA under the Atlantic credit card system; methods by which a dealer can evaluate his sales performance with respect to TBA; and methods for protecting the inventory of TBA from loss by deterioration and pilferage.

“About 8 hours of the course deals with the recommended line of TBA:

"2.14 Any dealer, to do business successfully, requires an initial stock of TBA. Atlantic assists him in evaluating the anticipated volume and nature of the business and deciding upon the amount of the initial stock. As part of its promotional activities under its sales commission contracts, Atlantic also attempts to convince him of the advantages of carrying the recommended brands but makes clear to him that he has every right to handle the TBA 259 brands he believes in. When there is a change of dealers at a station, the TBA stock on hand, regardless of brand, becomes available for purchase by the incoming dealer if he desires to purchase it, unless the outgoing dealer prefers to retain it for sale at a new location. The determination as to items to be sold is made by the dealers. Atlantic generally assists in securing prices on the various items and in estimating the salability of questionable items, such as shopworn or obsolete goods and used equipment. In cases where the purchase of any part of the stock is to be financed by Atlantic, Atlantic will purchase the same from the outgoing dealer and immediately transfer it to the incoming dealer against a note for the purchase price. In the infrequent instances where no replacement dealer is immediately available, Atlantic will purchase the TBA stock of the outgoing dealer to the extent it believes such stock will be acceptable to the new dealer when one is obtained. While in general Atlantic purchases salable recommended TBA items; at times non-recommended items may be purchased if they are in salable condition. No adjustment is made as between Atlantic and the outgoing dealer in respect of their relative contributions to the good will of Atlantic, the dealer or the station.

"2.15 Atlantic provides equipment of various types and in varying degrees to its dealers, the assortment furnished to lessee dealers being relatively complete and 260 to contract dealers less extensive. 'Atlantic' signs

and infrequently other items are provided to distributors for their dealers. There is no official list of such equipment, but the items most frequently provided to contract dealers include pumps, tanks, compressors, air towers, lifts, 'Atlantic' sign, outside lighting and poster frames, and to lessee dealers include, in addition to the foregoing, fire extinguishers, work benches, shelving and desks. No charge is made for these items to contract dealers or to distributors, and in the case of lessee dealers the items are considered part of the leased premises. No figures are available as to the average value of equipment supplied either to lessee or contract dealers or to distributors.

"2.16 Atlantic uses television, radio, newspapers, billboards, and (to a small extent) magazines to advertise Atlantic gasolines, motor oils, lubricants and car conditioning services and also to advertise TBA items and service without regard to brand. Such advertising is paid for entirely by Atlantic. Atlantic also has a sales promotion program involving the furnishing of driveway posters and other dealer aids to the dealers, direct mailings to credit card holders, and other promotional devices. Atlantic will guide individual lessee and contract dealers, distributors and distributors' dealers in preparation of promotional material, and will reimburse lessee and contract dealers (but not distributors or their dealers) 261 for a part of the cost of advertising through direct mail, radio, handbills and newspapers (without regard to the brand of TBA which may be included), with the limitation that Atlantic's share of any dealer's advertising is limited to 1½ percent of the dealer's gross annual sales. For 1955 the total reimbursement under this program was \$16,021.67 to both lessee and contract dealers; records do not disclose the totals for each such group separately. The records maintained are not kept in a manner that

shows how this figure was split between promotional material for TBA and other products and services.

262 "2.17 Atlantic's average property investment in a newly constructed lessee-operated station which it owns, including land, building and equipment, is presently about \$50,000.

"2.18 Service station operation requires land, buildings, equipment, tools, supplies and merchandise, which may be acquired as appropriate, by purchase for cash or on credit, by lease, rental or loan, or by consignment. The facilities may be simple or elaborate; the equipment, new or used; and the merchandise, basic or extensive. It is therefore impossible to establish meaningful average, minimum or maximum figures for investments by contract dealers and distributors. Because there is a greater uniformity in the design of leased stations at the present time, the minimum initial investment of a lessee dealer can be estimated at about \$4,000 for the average lessee station, which sells about 15,000 gallons per month. Of this investment, approximately \$500 would be in equipment and supplies, \$1,000 in cash, and the balance in merchandise for resale. The minimum initial investment would be about \$3,000 for a low-gallage, lessee station and about \$15,000 for a very high-gallage, lessee station.

"2.19 Following is a list of service station services that Atlantic dealers should be able to render satisfactorily:

1. Driveway Service (filling gas tank, cleaning
263 windshield and lights, et cetera.)

2. Chassis Lubrication.

3. Other Lubrication Services:

A. Oil Change

B. Transmission

a. Conventional

b. Automatic

- C. Differential
- D. Air Cleaners
- E. Speedometer Cable
- F. Electro-Hydraulic Mechanisms
- G. Front Spring Unit Housing (Knee Action)
- H. Front Wheel Bearings
- I. Lube Fitting Installation
- J. Oil Type (Wet) Clutch
- K. Hydraulic Steering Mechanisms

Services Occasionally Required

- L. Universal Joints
- M. Metal Covered Springs
- N. Clutch Release Bearing

4. Battery Service

- A. Preparation of Dry Batteries for Sale
- B. Testing by Open Circuit Testers (and Hydrometer)
- C. Adding Water
- D. Cleaning Terminals
- E. Fast Charging
- F. Slow Charging
- G. Installing Batteries—6 Volt—12 Volt
- H. Installing Battery Cables and Holddowns

5. Tire and Tube Services

- A. Inflating Properly
- B. Demounting and Mounting Conventional and Tubeless
- C. Tube Repairing—Hot and Cold Patches
- D. Rotating Tires
- E. Minor Casing Repairs
- F. Wheel Balancing (only if proper balancing equipment is available.)

6. Cooling System Service
 - A. Draining and Flushing
 - B. Cleaning and Protecting
 - C. Anti-freeze Servicing
7. Fan Belts
8. Radiator Hose
9. Shock Absorber Service
10. Brake Fluid—adding to master cylinder—bleeding
11. Electrical System
 - A. Ignition Wires
 - B. Lamps and Lights
 - C. Fuses and Circuit Breakers
12. Oil Filter and Filter Cartridges
13. Heater Hose
- 265 14. Spark Plugs—Testing, Cleaning, Regapping
15. Thermostats and Pressure Caps
16. Windshield Wiper Blades and Arms Service
17. Tire Chain Installation and Repair
18. Car Washing
19. Car Waxing and Polishing

266 "In addition to the services listed, Atlantic encourages lessee and contract dealers to do 'tune ups', 'adjustments' and minor repairs. Atlantic discourages general repairs which occupy so much space or personnel as to interfere with fundamental service station activities.

2.20 Service stations require long hours of operation. The hours of a particular station are determined by the buying habits of the trade where the station is located and the hours of competitive dealers. There are wide differences between stations in the number of hours of operation per week, on particular days of the week and in different seasons of the year. Atlantic expects its dealers to keep competitive hours but does not specify particular hours for particular stations. In the case of a few stations

(generally operated by lessees) it is economically advisable to keep open 24 hours a day, and Atlantic encourages the dealers to do so.

"2.21 Atlantic makes available to its dealers a suggested system of service station bookkeeping, including bookkeeping materials (CX 191 A-Q). A minority of Atlantic's dealers are believed to use this suggested form of bookkeeping. While the number using this form might be expected to increase under the new lease form B-3191 (7/56) (CX 88 A-1—A-3), no such trend has yet become apparent.

"2.22 Atlantic does not establish TBA quotas, but 267 does recommend to all dealers handling TBA the maintenance of a balanced stock of these items. The exact items and the quantity of each such recommendation depend upon the volume of business, the type of customers, the location, the proximity to sources of supply, the availability of capital for investment in merchandise, and storage facilities. In making their recommendations, Atlantic salesmen may, on occasion, use the Goodyear * * * Atlantic does not guarantee the credit of its dealers to suppliers of TBA or other items purchased by them.

"2.23 Dealer meetings (at which all Atlantic dealers are welcome, including lessee dealers, contract dealers and distributors' customers) are held from time to time by Atlantic salesmen or regional or district staff personnel, the regional TBA Coordinator, Goodyear * * *, either alone or jointly with Atlantic personnel, and manufacturers of accessories sold by Goodyear * * *. Manufacturers of tires, batteries and accessories not sold by Goodyear * * * also hold meetings for dealers, including Atlantic dealers. The frequency, location and character of dealer meetings depend upon many circumstances, including the personalities and methods of the persons and groups who hold such meetings and the funds and facilities available. The cost of such

meetings is borne by the company or companies holding the same.

268 "2.24 During 1955 Atlantic had on the average about 2480 stations available for operation by lessee dealers, an increase of about 160 over the average for 1954. In the course of the year 1955, about 720 lessee dealers ceased to operate as lessees of Atlantic and had to be replaced by Atlantic.

"3. Atlantic's TBA Program Before 1950 and Exploration of Alternatives.

"3.1 Before 1950 Atlantic purchased tires, batteries and accessories for resale to Atlantic dealers. It handled principally Lee tires, Exide batteries, Du Pont polishes and chemicals, Thermoid fan belts and radiator hose, Weed chains, Fram oil filters and cartridges, Schrader valves, and other brands of other accessories. With immaterial exceptions, purchases of these items were made by Atlantic direct from the manufacturer. The company names and addresses of these manufacturers are as follows:

Brand Name	Manufacturer
Lee	Lee Tire & Rubber Company 22nd and Race Streets, Philadelphia, Pennsylvania.
Exide	Electric Storage Battery Company 42 South 15th Street, Philadelphia, Pennsylvania.
Du Pont	E. I. Du Pont de Nemours and Company Wilmington, Delaware.
269 Thermoid	Thermoid Corporation Trenton, New Jersey.
Weed	American Chain and Cable Company York, Pennsylvania.
Fram	Fram Corporation Providence, Rhode Island.
Schrader	A. Schrader Sons 470 Vanderbilt Avenue, Brooklyn, New York.

"3.2 In 1947 the Domestic Marketing Department, recognizing the fundamental importance of a TBA program to Atlantic, its dealers and their customers, initiated an investigation to determine whether there were more desirable TBA programs than that under which Atlantic was then operating. CX 99 is the form of letter dated January 19, 1948, from Atlantic to the rubber companies named therein, which was one of the first steps in that investigation. CX 1 is a copy of the letter in such form sent to Goodyear.

"3.3 After having initially declined to make a proposal in response to Atlantic's inquiry of January 19, 1948 (CX 1A-3A), Goodyear expressed its willingness to do so in a letter dated May 4, 1949. CX 4 is a copy of that letter.

"3.4 Atlantic made sales of TBA products to its dealers and distributors in the years 1949, 1950, and 1951 as indicated on CX 193.

270 "4. Introduction of Sales Commission Program on Test basis.

271 "4.5 CX 121 is a draft of a proposal agreement between Goodyear and Atlantic, including Exhibit A thereto, which was not executed. CX 122 and 123 are correspondence between the parties referring to changes in this draft. CX 127-A-H comprises two Goodyear documents apparently sent to Atlantic for information. CX 13 is the contract as finally agreed upon, which (although dated June 1, 1950) was executed and delivered in December 1950. CX 124 and 125 are the letters transmitting the
272 executed counterparts of the agreement. CX 126 is an amendment to the agreement extending it to cover the Philadelphia-New Jersey, New York and New England Regions of Atlantic effective March 1, 1951. CX 126C and 126D are further amendments to the agreement dated July

7, 1954, and September 15, 1954, respectively. These are all the amendments to date.

"4.6 Operations under the agreement with Goodyear began in Newark on June 12, 1950. CX 130 sets forth the accounting procedure in connection with this operation, which is essentially the same as the procedure currently in effect in the three regions where Atlantic promotes the sale of Goodyear TBA. CX 131 sets forth Atlantic's recommendation as to battery charging equipment in the Newark District, which is essentially the same as its recommendation in all regions where it promotes the sale of Goodyear TBA.

"5. Adoption of Sales Commission Program on Company-Wide Basis.

"5.1 Subsequent to April 1950, progress reports were made purporting to report the number of dealers in the test districts accepting the program and the volume of TBA sales reported by Goodyear * * * in the test districts as compared with sales by Atlantic in the corresponding periods of 1949. ~~CX 116B is a copy of one such report~~ *stubs*
~~and * * *~~

273 "5.2 In July and August, 1950, Atlantic distributed a questionnaire to 80 percent of its dealers and distributors in the test districts. Of the 600 dealers and distributors to whom questionnaires were sent, about 120 executed and returned them. CX 134 is a copy of the questionnaire form showing in each answer space the total number of dealers and distributors who checked that space on their individual questionnaire, except for questions 3 and 4 from which are omitted those preferences for a combination of two or more sources. No information is available as to the omitted answers to questions 3 and 4 or as to the breakdown between dealers and distributors.

"5.3 In January 1951 Atlantic considered extending the test program to one or more regions. * * * The Phila-

delphia-New Jersey Regional Manager expressed his willingness and indicated a preference for Goodyear. (CX 158 is an inter-office letter from the Manager of this region relating to this general question.) * * *

On February 14, 1951, Lee Tire and Rubber Company, failing to obtain 274 a long-term contract with Atlantic covering the other two regions, canceled its contract effective March 1. This precipitated the decision to adopt the sales commission plan for all six regions. In the light of this decision the New York and New England Regional Managers expressed a preference for Goodyear, and Atlantic arranged to extend the coverage of its contract with Goodyear to those regions as well as the Philadelphia-New Jersey region. * * * There is no formal record of Atlantic's informing Goodyear as to the regions covered by Atlantic's sales commission contract with Firestone or informing Firestone as to the regions covered by Atlantic's sales commission contract with Goodyear, but this soon became a matter of common knowledge in the industry.

"5.4 * * * CX 155 is the 1951 Sales Plan for the New York Region which was in preparation at the time of the decision to adopt the sales commission program in that area. CX 154 is an inter-office letter from R. W. Reed, administrative assistant to D. T. Colley, to S. J. Heideman and others forwarding the plan for comments. CX 157 is a letter, written after the decision to adopt the sales commission program in New York, from H. K. Paxson, 275 assistant to S. J. Heideman, to the Manager of the New York Region, commenting on the plan and pointing out changes required by the adoption of the sales commission program.

"5.5 CX 149 is the form of letter sent by D. T. Colley under date of March 1, 1951, to all Atlantic sales personnel announcing adoption of the sales commission program. CX 150 is the form of letter on the same subject sent by

D. T. Colley under the same date to all Atlantic dealers. CX 148 is an inter-office letter dated February 27, 1951, transmitting the foregoing form letters to Mr. E. R. Cox, Manager of Atlantic's Sales Promotion Section, with instructions that they be printed and mailed promptly. On August 28, 1952, a copy of CX 206 was sent to every Atlantic dealer, and thereafter and until July 1955 a copy of this letter and CX 150 was given to each new Atlantic dealer. In July 1955, a copy of a similar letter (CX 207) was sent to every Atlantic dealer and since that date has been given to each new Atlantic dealer.

"5.6 CX 136 is a letter from S. J. Heideman to D. T. Colley written three weeks after the adoption of the sales commission program and reporting on the transition to the new sales method.

276 "6. Transition to Sales
Commission Program

"6.1 In 1950, when the test program was initiated, Atlantic turned over to * * * Goodyear lists naming all Atlantic dealers and distributors in the * * * Newark test district, * * * who to its knowledge handled TBA to any extent and commenced solicitation of these prospects to promote sales of the recommended brand of TBA. Shortly after March 1, 1951, Atlantic turned over similar lists of dealers and distributors and began similar solicitation in the balance of its regions. CX 173-175 are the only remaining records relating to the transmittal of such lists to * * * Goodyear * * *. Goodyear Form G-1209, * * * were prepared for the dealers and distributors named on the lists, and with rare exceptions Goodyear * * * approved the payment of commission on purchases of such dealers or distributors.

"6.2 Since prior to 1950, Atlantic has recommended to lessees the observance at their stations of the policy re-

specting signs which Atlantic follows at company-owned and operated stations. CX 132, which was written during the period of the test operation, sets forth this policy and its applications. Upon the adoption of the sales commission plan, Atlantic's Service Station and Sales Development Committees approved the design of Goodyear . . . signs recommended for use on Atlantic lessee stations selling Goodyear . . . TBA. Goodyear . . . then arranged for installation of such signs at stations handling their respective brands of TBA.

"6.3 From time to time Goodyear sign crews reported to Goodyear and Goodyear in turn reported to Atlantic the names of dealers (both lessee and contract) who would not permit Goodyear identification and, where possible, the reasons given for such action. From time to time Atlantic requested and Goodyear supplied supplemental lists of such dealers. Atlantic salesmen then revisited such dealers and attempted to convince them of the advantages of taking on the Goodyear line, if they did not already carry it, and displaying Goodyear identification. CX 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, and 172 are inter-company and inter-office correspondence relating to these activities. Atlantic did not and does not keep records of the identification displayed by its dealers and cannot state how many of the dealers who originally refused to permit Goodyear identification ultimately agreed to display the same.

"6.4 During the first months of the new program Atlantic obtained from Goodyear . . . progress reports showing the number of dealers taking on the respective 278 TBA lines and other information. CX 48F, and 208 through 214F are copies of such of these reports as were found in Atlantic's files.

"6.5 When the sales commission program was adopted, Atlantic had outstanding obligations to dealers who had purchased Lee tires and Exide batteries from Atlantic in

respect of guarantees which Atlantic had authorized the dealers to make. Atlantic was obligated to reimburse the dealer for his net cost in fulfilling guaranty obligations, i.e., the difference between the dealer's cost of the replacement article and any amount paid by the dealer's customer in the transaction. This net cost was shared between Atlantic and Goodyear * * *. The tire company supply points handled the replacement transactions and Atlantic paid the tire company Atlantic's share of the cost. The total amount paid by Atlantic to Goodyear was approximately \$6,637.05 * * *. CX 47A-B and 47C-D are copies of memoranda dealing with the Lee and Exide adjustments, respectively.

6.6 In 1951 and prior years, Atlantic credit cards specified that "tires, tubes, batteries and accessories" might be charged thereon. For the year 1950 and prior years, the credit card guides, the only instructions to Atlantic dealers on the subject, indicated that the credit 279 privilege was limited to 'new Lee tires and tubes and Exide batteries.' The credit card guide in use in 1951 and 1952 indicated that the credit privilege was limited to tires and tubes, recapping, batteries and automotive accessories 'recommended by Atlantic.' Similarly, on the 1952 credit card which was distributed in October of 1951 and was in effect from December 1951 to December 1952, 'tires, tubes, recapping, batteries, and automotive accessories recommended by Atlantic' were specified as the TBA items for which the credit card would be honored. In 1953 and subsequent years both Atlantic credit cards and the credit card guides have specified that tires, tubes, recapping, batteries and automotive accessories might be charged thereon without any limitation to those 'recommended by Atlantic.' CX 146 is the minutes of a staff meeting at which Atlantic's present credit card policy was recommended to management. CX 215 through 221 are the credit

cards for the years 1950 through 1956 and CX 222 through 225 are the credit card guides for those years. Atlantic keeps no record of TBA credit sales broken down by dealer classes. The estimated numbers of credit card holders for years 1951-1956 are as follows:

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Year	Number of Credit Card Accounts (Estimated)
1951	73,000
1952	82,000
1953	96,000
1954	116,000
1955	130,000
1956	161,000

"6.7 In 1951 certain Atlantic personnel suggested that action be taken to limit the extension of credit to TBA supplied by Goodyear . . . CX 140-145 relate to this proposal. No action was ever authorized or taken on this suggestion.

7. Supplemental Data

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"7.3 On the dates specified in the left-hand column Atlantic had the following numbers of lessee and contract dealers in the Eastern Pennsylvania, Western Pennsylvania and Southern marketing regions.

282

	Lessee Dealers			Contract Dealers		
	E. Pa.	W. Pa.	S.	E. Pa.	W. Pa.	S.
March 1950	451	234	249	1854	1341	548
December 1950	468	239	253	1776	1305	476
April 1951	468	244	263	1770	1246	465
December 1951	469	258	261	1739	1113	429
December 1952	484	270	268	1617	1059	366
December 1953	478	284	301	1179	929	318
December 1954	487	298	362	1054	853	191
December 1955	496	312	392	1096	749	134
June 1956	480	317	399	1075	725	121

"7.4 The following table shows for the dates specified the number of gasoline distributors and the approximate number of distributors' service station customers in each of Atlantic's marketing regions:

	March 1950		March 1951		March 1952		June 1956	
	Gas Dist.	S.S. Cust.	Gas Dist.	S.S. Cust.	Gas Dist.	S.S. Cust.	Gas Dist.	S.S. Cust.
New England	8	*	8	*	7	*	8	151
New York	39	*	40	*	42	*	48	238
Phila.-N.J.	16	*	8	*	5	*	0	0
Eastern Pa.	52	*	53	*	54	*	77	925
Western Pa.	36	*	32	*	32	*	26	410
South	111	*	103	*	96	*	77	1173
	262		244		236		236	2897

* Data unobtainable.

283 Mr. Kelaher: There are certain documents referred to in the stipulation which have not as yet been offered in evidence. I am referring to the stipulation just entered into the record. At this time we would like to have the following documents assigned specific Commission Exhibit numbers for identification.

The document identified as Atlantic Dealer Lease Form B-3191, 7/56, to be identified as Commission Exhibits 88-A-1 and 88-A-2.

Attached to this exhibit is a document entitled Schedule A, Attachment to Form B-3191 7/56 Lease, to be identified as 88-A-3.

Atlantic document referred to as "Eleven Point Lease Letter," not identified by number or title, to be identified as CX 88-B.

Document identified as Atlantic equipment and apparatus inventory, Form B-3191A 10/54, to be identified as Commission Exhibit 88-C.

The next document is Atlantic agreement covering pur-

chase of Atlantic automotive lubricants, Form B-3105-8/53, to be identified as CX 88-D.

Atlantic Dealer Lease Form B-3191Y 5-55, to be identified as 88-E-1 and 88-E-2. Referred to in the stipulation in paragraph 2.4.

I now offer the documents identified as Commission 284 Exhibits 88-A-1 through 88-E-2 into evidence.

Mr. Ballard: No objection.

Mr. Mason: No objection.

Hearing Examiner Kolb: There being no objection the documents will be received in evidence as Commission Exhibits 88-A-1 through 88-E-2.

(The documents heretofore marked COMMISSION EXHIBITS 88-A-1, 88-A-2, 88-A-3, 88-B, 88-C, 88-D, 88-E-1, and 88-E-2 for identification, were received in evidence.)

Mr. Kelaher: Atlantic credit card agreement, Form B-3194 2/53, to be identified as Commission Exhibit 89-A. We offer 89-A into evidence.

Mr. Mason: No objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 89-A.

(The document heretofore marked COMMISSION EXHIBIT 89-A for identification was received in evidence.)

Mr. Kelaher: Atlantic Bailment Agreement, Form B-3107A 7-55, to be identified as Commission Exhibit 90-C and D. We now offer Commission Exhibit 90-C and D into evidence.

Mr. Mason: No objection.

Mr. Ballard: No objection.

285 Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibits 90-C and D.

(The document heretofore marked COMMISSION EX-

HIBIT 90-C and D for identification was received in evidence.)

Mr. Kelaher: For purposes of the record Commission Exhibit 89-A previously received in evidence is referred to in paragraph 2.4 of the stipulation. Commission Exhibit 90-C and D are referred to in paragraph 2.5 of the stipulation.

Atlantic Loaned Equipment Contract, Form B-42, 8/53, to be identified as Commission Exhibit 97-A.

We now offer Commission Exhibit 97-A into evidence.

Mr. Mason: No objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 97-A.

(The document heretofore marked COMMISSION 97-A for identification was received in evidence.)

Mr. Kelaher: Commission Exhibit 97-A is referred to in paragraph 2.5 of the stipulation.

Atlantic Authorized Distributor's Agreement Form B-3143, 8/54 to be identified as Commission Exhibits 95-D, E, and F. Commission Exhibit 95-D, E and F is now offered into evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: There being no objection 286 the document will be received in evidence as Commission Exhibit 95-D to F inclusive.

(The document heretofore marked COMMISSION EXHIBIT 95-D, E, and F for identification was received in evidence.)

Mr. Kelaher: Commission Exhibit 95-D, E and F is referred to in paragraph 2.6 of the stipulation.

Atlantic Authorized Distributors Agreement, Form B-3119, 11-53, to be identified as Commission Exhibit 96-A. We now offer Commission Exhibit 96-A into evidence.

Mr. Mason: No objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: There being no objection the document will be received in evidence as Commission Exhibit 96-A.

(The document heretofore marked COMMISSION EXHIBIT 96-A for identification was received in evidence.)

Mr. Kelaher: Atlantic Commission Distributor Consignment Agreement, to be identified as Commission Exhibit 98-H through L. We now offer Commission Exhibit 98-H through L in evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 98-H to L.

287 (The document heretofore marked COMMISSION EXHIBIT 98-H through L for identification was received in evidence.)

Mr. Kelaher: Atlantic Commission Agent Consignment Agreement, to be identified as Commission Exhibit 98-M through Q. We now offer Commission Exhibit 98-M through Q into evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: The document will be received in evidence.

(The document heretofore marked COMMISSION EXHIBIT 98-M through Q for identification was received in evidence.)

Mr. Kelaher: Atlantic Bulk Sales Agreement, Form B-3137 J. L. IM, 11/46, to be identified as Commission Exhibit 98-R through T. We offer the document in evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 98-R to T.

(The document heretofore marked COMMISSION EXHIBIT 98-R through T for identification was received in evidence.)

Mr. Kelaher: Commission Exhibit 96-A to 98H through T are referred to in paragraph 2.6 of the stipulation.

Atlantic Contract Sales Agreement, Trained Dealers, Form B-3188, 7/56, to be identified as Commission Exhibit 98-U and V into evidence.

Mr. Ballard: No objection.

Mr. Mason: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 98-U and V.

(The document heretofore marked COMMISSION EXHIBIT 98-U and V for identification was received in evidence.)

Mr. Kelaher: The document is referred to in paragraph 2.8 of the stipulation.

Atlantic Contract Sales Agreement, effective 3/26/56, to be identified as CX 98-W through X. We now offer CX 98-W through X into evidence.

Mr. Mason: No objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 98-W to X, inclusive.

(The document heretofore marked COMMISSION EXHIBIT 98-W through X for identification was received in evidence.)

Mr. Kelaher: CX 98-W through X, inclusive, is referred to in paragraph 2.9 of the stipulation.

Atlantic's "Dealer Accounting System," 9-54, consisting of the "Guide to the Records" (7 pages) and component Forms Nos. 1-8 listed and described thereon.

We now offer Commission Exhibit 191-A through Q into evidence.

Hearing Examiner Kolb: Is there objection?

Mr. Mason: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 191-A through Q.

(The document heretofore marked COMMISSION EXHIBIT 191-A through Q for identification was received in evidence.)

Mr. Kelaher: Commission Exhibit 191-A through Q is referred to in paragraph 2.21 of the Stipulation.

Firestone TBA Suggested Stock and Inventory Guide for Service Station Dealers, copyright 1956, Rev. 3-56, to be identified as CX 192. We now offer CX 192 into evidence.

Mr. Mason: If your Honor please, Goodyear respondents make the same objection to this document that they have heretofore made to other Firestone documents. If it is agreeable with your Honor, I will simply refer to that as the Firestone objection as to any future document.

Hearing Examiner Kolb: All documents or exhibits pertaining to Firestone will be received in evidence as to Atlantic, and subject to motion to strike so far as Goodyear is concerned. That will take care of all the documents in this list we have.

290 (The document heretofore marked COMMISSION EXHIBIT 192 for identification was received in evidence.)

291 Mr. Kelaher: CX 192 is referred to in Paragraph 2.22 of the stipulation. Letter dated April 6, 1948, from S. A. Gaylord, manager, petroleum sales department, Goodyear, Inc., to Mr. J. S. Parks, purchasing agent, ARCO, to be identified as CX 3A. We now offer CX 3A into evidence.

Mr. Mason: No objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: There being no objection, document 3A will be received in evidence.

(Whereupon, COMMISSION'S EXHIBIT 3A was received in evidence.)

Mr. Dias: For identification, a Commission's Exhibit 193, ARCO tabulation entitled "Atlantic TBA marketing, 1949 through 1951," referred to in the stipulation, Paragraph 3.4. I offer the document in evidence.

Mr. Ballard: I would like to state for the record, while I have no objection to this document going in evidence, it should be clear that this is a tabulation prepared for purposes of this case and is not one of the business records of Atlantic.

Mr. Mason: No objection.

Mr. Ballard: May I also state further that this was prepared at the request of Commission's counsel.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 193.

292 (Whereupon, COMMISSION'S EXHIBIT 193 was received in evidence.)

Mr. Dias: For identification as Commission's Exhibit 105-C, letter amendment agreement dated November 3, 1954, from D. T. Colley, Vice-President, ARCo, to Mr. H. D. Tompkins, Vice-President, Firestone, referred to in the stipulation, Paragraph 4.3. I offer it in evidence.

Mr. Mason: Note the Firestone objection as to Goodyear.

Hearing Examiner Kolb: Commission's Exhibit 105-C will be received in evidence as to Atlantic, and subject to a motion to strike as to Goodyear.

(Whereupon, COMMISSION'S EXHIBIT 105-C was received in evidence.)

Mr. Dias: For identification as Commission's Exhibit 126-C, letter amendment agreement dated July 7, 1954, from D. T. Colley, Vice-President, ARCo, to Mr. Victor Holt, Jr., Vice-President, Goodyear, Inc., referred to in the stipulation at Paragraph 4.5. I now offer it in evidence.

Mr. Mason: No objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 126-C.

(Whereupon, COMMISSION'S EXHIBIT 126-C was received in evidence.)

293 Mr. Dias: For identification as Commission's Exhibit 126-D, letter amendment agreement dated September 15, 1954, from D. T. Colley, Vice-President, ARCo, to Mr. Victor Holt, Jr., Vice-President, Goodyear, Inc. I offer it in evidence.

Mr. Mason: No objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 126-D.

(Whereupon, COMMISSION'S EXHIBIT 126-D was received in evidence.)

Mr. Dias: Exhibit 126-D is referred to in the stipulation at Paragraph 4.5.

For identification as Commission's Exhibit 194, ARCo Tabulation—Summary—May Sales 1950, and two months Sales through May, 1950—Atlantic Erie and Wilmington Districts, referred to in Paragraph 5.1 of the stipulation. I offer the document in evidence.

Mr. Mason: I note an objection to this document. Although it isn't apparent on the face of the document, actually it refers solely to statistics in the Firestone area.

Mr. Kelaher: That is correct.

Hearing Examiner Kolb: The document, Commission's Exhibit 194, will be received in evidence as to Atlantic, and subject to motion to strike on the part of Goodyear.

294 (Whereupon, COMMISSION'S EXHIBIT 194 was received in evidence.)

Mr. Dias: For identification as Commission's Exhibit 195-A through -C, letter dated June 2, 1950, from G. M. Elliot, Petroleum Sales, Firestone, to Mr. Leon Seren, ARCo. inclosing April 1950 TBA "Summary" (CX 195-B)

and "Erie District" (CX 195-C). I offer those in evidence.

Mr. Mason: Goodyear has the Firestone objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 195-A through -C as to Atlantic, and subject to a motion to strike on the part of Goodyear.

(Whereupon, COMMISSION'S EXHIBIT 195-A through -C was received in evidence.)

Mr. Dias: For identification as 196-A and -B, letter dated June 6, 1950, from G. M. Elliot, Petroleum Sales, Firestone, to Mr. S. J. Heideman, ARCo, inclosing TBA summary through May 27, 1950, Wilmington and Erie Districts. I offer them in evidence.

Mr. Mason: Firestone objection as to Goodyear.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 196-A and -B as to Atlantic, subject to a motion to strike on the part of Goodyear.

295 (Whereupon, COMMISSION'S EXHIBIT 196-A and -B was received in evidence.)

Mr. Dias: For identification as Commission's Exhibit 197-A and -B, letter dated June 23, 1950, from S. J. Heideman, ARCo, to Mr. J. A. Addison, Sales Manager, Firestone, inclosing TBA "Sales Comparison—month of May, 1950, versus 1949," Wilmington and Erie Districts. I offer them in evidence.

Mr. Mason: Goodyear has the Firestone objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 197-A and -B as to Atlantic, and subject to motion to strike by Goodyear.

(Whereupon, COMMISSION'S EXHIBIT 197-A and -B was received in evidence.)

Mr. Dias: For identification as Commission's Exhibit 198-A and -B, ARCo tabulations entitled "Final TBA Sales, June, 1950," by ARCo Marketing Regions, and "Sales Comparison—month of June, 1950 versus 1949," for Wilmington, Erie and Newark Districts. I offer them in evidence.

Mr. Mason: Insofar as this document gives Firestone statistics, I have the Firestone objection. In some of the regions here there is no sales commission plan effective between Goodyear and Atlantic.

Hearing Examiner Kolb: The figures have been 296 combined here, is that it?

Mr. Kelaher: The document shows data for the six marketing regions of Atlantic. It also shows data for so-called test areas, two of which were under the Firestone TBA program and one of which was under the Goodyear TBA program. And Commission's Exhibit 198-B likewise shows data for the Wilmington, Delaware, and Erie, Pennsylvania, districts which were under the Firestone TBA program, and the Newark, New Jersey, district which was under the Goodyear TBA program.

Hearing Examiner Kolb: Commission's Exhibit 198-A and -B will be received in evidence. Statement by counsel indicates the application of the relative figures to Atlantic and Goodyear.

(Whereupon, COMMISSION'S EXHIBIT 198-A and -B was received in evidence.)

Mr. Dias: For identification as 199-A and -B, ARCo tabulations entitled "Final TBA Sales—July, 1950" by ARCo Marketing Regions, and "Sales Comparison—month of July, 1950 versus 1949," for Wilmington, Erie and Newark Districts.

Mr. Kelaher: The same remarks with respect to CX 198-A and -B apply to CX 199-A and -B with respect to the data shown thereon.

Hearing Examiner Kolb: Wilmington area districts are Firestone, and Newark is Goodyear, is that it?

Mr. Kelaher: Yes, your Honor.

297 Mr. Mason: I object to this document insofar as Counsel's statement has indicated the portions that refer to the Firestone area. As to that I have the Firestone objection.

Hearing Examiner Kolb: Based upon counsel's statement, it appears that the document on its face shows application to Firestone and to Goodyear. Under these circumstances, the document will be received in evidence as Commission's Exhibit 199-A and -B.

(Whereupon, COMMISSION'S EXHIBIT 199-A and B was received in evidence.)

Mr. Dias: For identification as Commission's Exhibit 200-A and B, ARCo tabulations entitled "Final TBA Sales—August 1950" by ARCo Marketing Regions, and "Sales Comparison—month of August, 1950 versus 1949," for Wilmington, Erie and Newark Districts. I offer it in evidence.

Mr. Kelaher: The same comment previously made with respect to CX 198-A and B applies to CX 200-A and B.

Mr. Mason: Goodyear objects to the document insofar as it contains data exclusively relating to the area in which Goodyear does not have a sales-commission arrangement.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 200-A and B for the reasons stated on the previous exhibit.

(Whereupon, COMMISSION'S EXHIBIT 200-A and B was received in evidence.)

298 Mr. Dias: For identification as Commission's Exhibit 201-A and B, ARCo tabulations entitled "Final TBA Sales—September 1950," by ARCo Marketing Regions, and "Sales Comparison—month of September, 1950

versus 1949" for Wilmington, Erie and Newark Districts. I offer it in evidence.

Mr. Kelaher: The same comments previously made with respect to CX 198-A and B apply to CX 201-A and B.

Mr. Mason: I have the same objection as to the previous document. I assume it is covered by your Honor's ruling.

Hearing Examiner Kolb: Yes.

The document will be received in evidence as Commission's Exhibit 201-A and B, for the reasons stated as to the previous two exhibits.

(Whereupon, COMMISSION'S EXHIBIT 201-A and B was received in evidence.)

Mr. Dias: For identification as Commission's Exhibit 202, ARCo tabulation entitled "Final TBA Sales—October 1950," by ARCo Marketing Regions. I offer it in evidence.

Mr. Mason: Goodyear has the same objection as to the immediately preceding documents, and assumes it is covered by your Honor's ruling.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 202.

(Whereupon, COMMISSION'S EXHIBIT 202 was received in evidence.)

Mr. Dias: For identification as Commission's Exhibit 203-A through C, ARCo tabulations entitled "Final TBA Sales—November 1950," by ARCo Marketing Regions, and "Sales Comparison—month of November, 1950 versus 1949" for Newark, Wilmington and Erie Districts (CX 203-B) and "Dollars per thousand gallons of gasoline, Class 2 dealers, cumulative July through November, 1950," by ARCo Marketing Region, and Newark, Wilmington and Erie Districts (CX 203-C). I offer them in evidence.

Mr. Mason: Goodyear has the same objection as to the documents immediately preceding, and assume it is covered by the same ruling.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 203-A through C.

(Whereupon, COMMISSION'S EXHIBIT 203-A through C was received in evidence.)

Mr. Dias: For identification as 204-A through C, ARCo tabulations entitled "Final TBA Sales—December 1950," by ARCo Marketing Regions, and "Sales Comparison—month of December, 1950 versus 1949," for Newark, Wilmington and Erie Districts (CX 204-B), and "Dollars per thousand gallons of gasoline, Class 2 dealers, cumulative July through December 1950," by Marketing Regions, 300 and Newark, Wilmington and Erie Districts (CX 204-C). I offer them in evidence.

Mr. Mason: Goodyear has the same objection as to the documents immediately preceding, and assume it is covered by the same ruling.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 204-A through C, subject to the same ruling.

(Whereupon, COMMISSION'S EXHIBIT 204-A through C was received in evidence.)

Mr. Dias: For identification as Commission's Exhibit 205, ARCo tabulation entitled "Summary," showing "December Sales" and "two-months sales through December 1950" for Erie and Wilmington Districts. I offer it in evidence.

All exhibits from CX 194 through CX 205 are referred to in stipulation paragraph 5.1.

Mr. Mason: As to this we have the straight Firestone objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 205 as to Atlantic, and subject to a motion to strike for Goodyear.

(Whereupon, COMMISSION'S EXHIBIT 205 was received in evidence.)

301 Mr. Dias: Let the record show that the preceding twelve exhibits, commencing at Exhibit 194, through Commission Exhibit 205, are referred to in the stipulation at paragraph 5.1.

For identification as Commission Exhibit 206, Atlantic Form letter dated August 28, 1952 from D. T. Colley, Vice-President, ARCo. to all Atlantic dealers in re: "A Re-Statement of Atlantic's TBA Policy". I offer it in evidence.

Mr. Mason: No objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 206.

(The document heretofore marked COMMISSION EXHIBIT 206 for identification was received in evidence.)

Mr. Dias: For identification as Commission Exhibit 207, Atlantic form letter dated June 24, 1955 from Manager, Marketing Region, addressed "To All Atlantic Dealers, in re 'No Forcing'."

Mr. Mason: No objection.

Hearing Examiner Kolb: There being no objection the document will be received in evidence as Commission Exhibit No. 207.

(The document heretofore marked COMMISSION EXHIBIT 207 for identification was received in evidence.)

Mr. Dias: Let the record show that Exhibits 207 302 and 206 are referred to in the stipulation at paragraph 5.5.

Mr. Dias: For identification as Commission Exhibit 208, tabulation entitled "The Atlantic Refining Company, Progress through May 21, 1951." I offer the document.

Hearing Examiner Kolb: There being no objection the document will be received in evidence as Commission Exhibit No. 208.

(The document heretofore marked COMMISSION EXHIBIT NO. 208 for identification was received in evidence.)

Mr. Dias: For identification as Commission Exhibit 209, tabulation entitled "The Atlantic Refining Company, Progress through May 28, 1951." I offer it in evidence.

Hearing Examiner Kolb: There being no objection the document will be received in evidence as Commission Exhibit 209.

(The document heretofore marked COMMISSION EXHIBIT 209 for identification was received in evidence.)

Mr. Dias: For identification as Commission Exhibit 210, tabulation entitled "The Atlantic Refining Company, Progress through August 20, 1951." I offer it in evidence.

Hearing Examiner Kolb: Is there objection?

Mr. Mason: No, sir.

Hearing Examiner Kolb: There being no objection the document will be received in evidence as Commission Exhibit 210.

303 (The document heretofore marked COMMISSION EXHIBIT NO. 210 for identification was received in evidence.)

Mr. Dias: For identification as Commission Exhibit 211, tabulation entitled, "Atlantic Progress Report," dated October 29, 1951, with distribution to Messrs. S. J. Heide-man, Atlantic; F. W. McConky, Jr., Northeast Division Manager, New York; S. A. Gaylord, Manager, Petroleum Sales, Akron; J. W. O'Neill, Division Petroleum Representative, Philadelphia. I offer the document in evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 211.

(The document heretofore marked COMMISSION EXHIBIT 211 for identification was received in evidence.)

Mr. Dias: For identification as Commission Exhibit 212, tabulation entitled "Atlantic Progress Report," dated December 24, 1951, with distribution to Messrs. S. J. Heide-man, Atlantic; F. W. McConky, Jr., Northeast Division

Manager, New York; S. A. Gaylord, Manager, Petroleum Sales, Akron; J. W. O'Neill, Division Petroleum Representative, Philadelphia. I offer it in evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: There being no objection the document will be received in evidence as Commission Exhibit 212.

304 (The document heretofore marked COMMISSION EXHIBIT 212 for identification was received in evidence.)

305 Mr. Dias: For identification as 213-A through F, letter dated May 14, 1951, from G. M. Elliot, petroleum sales, Firestone, to Mr. Leon Serven, ARCO (CX 213-A), inclosing "summary" of sales for March, 1951, and the first five months of fiscal year (CX 213-B), with breakdown for ARCO, marketing regions (E. Pa., W. Pa., and Southern), by Firestone and Atlantic Districts (CX 213-C-F). I offer it in evidence.

Mr. Mason: This is a document that is exclusively Firestone so we have a Firestone objection as to it.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 213-A through F as to Atlantic, subject to motion to strike as to Goodyear.

(The document referred to was marked Commission Exhibit 213-A through F for identification.)

Mr. Dias: For identification as Commission Exhibit 214-A through D, Firestone tabulations dated April 19, 1951, entitled "The Atlantic Refining Company, Progress Through 4-14-51" for three Marketing Regions (CX 214-A) and for each Marketing Region by Atlantic and Firestone Districts (CX 214-B-D). I offer those in evidence.

Mr. Mason: Firestone objection as to Goodyear.

Hearing Examiner Kolb: Do the tabulations show the extent of application of the two?

Mr. Kelaher: They are all Firestone.

306 Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 214-A through D as to Atlantic, subject to motion to strike as to Goodyear.

(The document heretofore marked for identification COMMISSION EXHIBIT 214-A through D, was received in evidence.)

Mr. Dias: For identification as 214-E, Firestone tabulation entitled "The Atlantic Refining Company, Summary, April Sales, and Fiscal Year Sales Through April 1951" for three ARCo. Marketing Regions. I offer it in evidence.

Mr. Mason: Firestone objection as to that. There is a handwritten notation at the bottom: "CK received, \$38,552.47."

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 214-E as to Atlantic, and subject to a motion to strike as to Goodyear.

(The document heretofore marked for identification COMMISSION EXHIBIT 214-E was received in evidence.)

Mr. Dias: For identification as 214-F, Firestone tabulation entitled, "The Atlantic Refining Company, Summary, December, 1951, and 2 months Sales Thru December, 1951" for three ARCo. Marketing Regions by Firestone Districts. I offer it in evidence. There is a notation on the bottom in handwriting "Check received, \$24,616.48."

Mr. Mason: Firestone objection.

307 Hearing Examiner Kolb: The document will be received in evidence as 214-F as to Atlantic, and subject to a motion to strike by Goodyear.

(The document heretofore marked for identification COMMISSION EXHIBIT 214-F was received in evidence.)

Mr. Dias: Let the record show that the preceding nine Commission Exhibits commencing with 208 through 214-F inclusive, are referred to in the stipulation at paragraph 6.4.

For identification as Commission Exhibit 47-C and D, Goodyear Sales Department Instructions dated 5-31-51, subject: "Handling Exide Battery Adjustments for Atlantic Dealers." I offer it.

Mr. Ballard: I have no objection.

Hearing Examiner Kolb: There being no objection, the document will be received in evidence as Commission Exhibit 47-C and D.

(The document heretofore marked for identification COMMISSION EXHIBIT 47-C and D was received in evidence.)

Mr. Dias: Let the record show that the Commission Exhibits 47-C and D are referred to in the stipulation at paragraph 6.5.

For identification as Commission Exhibit 215-A, ARCO credit card, year 1950.

308 For identification as Commission Exhibit 215-B, ARCo. Credit Card—Year 1950—

For identification as Commission Exhibit 216-A and B, ARCo. Credit Card—Year 1951.

For identification as Commission Exhibit 217-A and B, ARCo. Credit Card—Year 1952.

For identification as Commission Exhibit 218-A and B, ARCo. Credit Card—Year 1953.

For identification as Commission Exhibit 219-A and B, ARCo. Credit Card—Year 1954.

For identification as Commission Exhibit 220-A and B, ARCo. Credit Card—Year 1955.

For identification as Commission Exhibit 221-A and B, ARCo. Credit Card—Year 1956.

I offer them all in evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: There being no objection, the documents will be received in evidence as Commission

Exhibit 215-A and B through Commission Exhibit 221-A and B:

(The documents heretofore marked for identification **EXHIBIT 215-A and B through COMMISSION EXHIBIT 221-A and B** were received in evidence.)

Mr. Dias: For identification as Commission Exhibit 222, document entitled "Credit Card Guide—Atlantic" numbered 960 R-10M-6-50.

309 I offer it in evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 222.

(The document heretofore marked for identification **COMMISSION EXHIBIT 222** was received in evidence.)

Mr. Dias: For identification as Commission Exhibit 223, document entitled "Credit Card Guide—Atlantic" numbered 1028-14 M-1-51.

I offer it in evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: There being no objection the document will be received in evidence as Commission Exhibit 223.

(The document heretofore marked for identification **COMMISSION EXHIBIT 223** was received in evidence.)

Mr. Dias: For identification as Commission Exhibit 224-A and B, document entitled "Atlantic Credit Card Guide" number 1310-12M-3-53.

I offer it in evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: There being no objection the document will be received in evidence as Commission Exhibit 224-A and B.

310 (The document heretofore marked for identification **COMMISSION EXHIBIT 224-A and B** was received in evidence.)

Mr. Dias: For identification as Commission Exhibit 225, "Atlantic Credit Card Guide" numbered 2129-13M-6-56. (12 pages.)

I offer it in evidence.

Mr. Mason: No objection.

Hearing Examiner Kolb: There being no objection, the document will be received in evidence as Commission Exhibit 225.

(The document heretofore marked for identification COMMISSION EXHIBIT 225 was received in evidence.)

Mr. Dias: Let the record show that the proceedings eleven exhibits, commencing at 215-A and B, through 225, are referred to in the stipulation at paragraph 6.6.

Hearing Examiner Kolb: We will recess until 2 o'clock.

(Whereupon, at 12:53 p. m. a recess was taken until 2 o'clock.)

311

Afternoon Session.

(2:30 p. m.)

Mr. Dias: Mr. Examiner, I offer for identification the following Commission exhibits:

As Commission Exhibit 80-R, Goodyear Organization Chart—Tire Sales Division (Akron)—as of 4-22-57.

As Commission Exhibit 80-S, Goodyear Organization Chart—Tire Sales Division (Field)—as of 4-22-57.

As Commission Exhibit 80-T, Goodyear Organization Chart—Tire Division—as of 4-22-57.

As Commission Exhibit 80-U, Maps entitled "Goodyear Regions & Districts" (current).

As Commission Exhibit 229, Goodyear Price List and Supplement—"Automobile Tires and Tubes"—effective 1-1-57, revised 2-11-57 (10 pp.).

As Commission Exhibit 230, Goodyear Price List—

"Tube Type Pneumatic Truck Tires and Tubes"—effective 1-1-57 (12 pp.).

As Commission Exhibit 231, Goodyear Price List—"Tubeless Pneumatic Truck Tires"—effective 1-1-57 (8 p.).

As Commission Exhibit 232, Goodyear Price List—"Natural Rubber Truck Tubes"—effective 1-1-57 (1 p.).

As Commission Exhibit 233, Goodyear "Discounts to Dealers from 'Goodyear Price' to Code Price"—effective 1-1-57, revised 2-11-57 (2 pp.).

As Commission Exhibit 234, Goodyear Price List—"Motorcycle Tires and Tubes"—effective 1-1-57 (2 pp.).

312 As Commission Exhibit 235, Goodyear Price List—"Farm Tractor and Implement Tires, Tubes, Rims"—effective 1-1-57 (12 pp.).

As Commission Exhibit 236, Goodyear Price List—"Industrial Tires and Tubes"—effective 1-1-57 (8 pp.).

As Commission Exhibit 237, Goodyear "Confidential Ready Reference Chart Showing Application of Discounts to Contract Dealers"—effective 1-1-57, revised 2-11-57 (4 pp.).

As Commission Exhibit 238, Goodyear "Tire Retreading and Repairing Price List"—effective 9-1-56 (13 pp.).

As Commission Exhibit 239, Goodyear "Retread and Repair Materials—Dealers Price List"—effective 5-18-56 (16 pp.).

As Commission Exhibit 240 A-D, Goodyear Batteries—Suggested Retail Prices (2 pp.)—352 Dealer Prices (2 pp.)—Jobber Prices—Jobber A Prices—effective 11-12-56 (6 pp.).

As Commission Exhibit 240 E-H, Goodyear Batteries—Suggested Retail Prices (3 pp.)—Jobber Prices—Jobber A Prices—(Western Division)—effective 11-12-56 (5 pp.).

As Commission Exhibit 241, "Goodyear Battery Policy and Sales Program"—effective 2-20-57 (4 pp.).

As Commission Exhibit 242, Goodyear "Car and Home Merchandise Price List—Spring and Summer 1957"—Price List W—Direct Goodyear Dealers Only—dated 1-57 (59 pp.).

313 As Commission Exhibit 243, Goodyear "Car and Home Merchandise Price List—Spring and Summer 1957"—Price List 75—Direct Goodyear Dealers Only—dated 1-57 (55 pp.).

As Commission Exhibit 244, Goodyear "Car and Home Merchandise Price List—Spring and Summer 1957"—Price List D—dated 1-57 (124 pp.).

As Commission 245, Goodyear "Car and Home Merchandise Price List—Spring and Summer 1957"—Price List TBA—dated 1-57 (27 pp.).

As Commission Exhibit 246, "Goodyear Car and Home Merchandise, Spring and Summer, 1957"—Retail Catalog.

As Commission Exhibit 44-C, Goodyear Form G-1207 (1-56)—entitled "Record of Sales to Oil Co. Associate Dealers".

As Commission Exhibit 44-D, Goodyear Form B-91 (1-57)—entitled "General Line Sales by Customer".

As Commission Exhibit 44-E, Goodyear Form B-61 (11-54)—entitled "Associate Dealer Agreement", and "Associate Dealer Agreement Stub."

As Commission Exhibit 44-F, Goodyear Form G-110 (1-51)—entitled "Service Station Agreement," and "Service Station Agreement Stub."

As Commission Exhibit 44-G, Goodyear Form G-110 (5-56)—entitled "Service Station Agreement," and "Service Station Agreement Stub."

314 As Commission Exhibit 247-B, Goodyear TBA Inventory Guide S-9884, Rev. 8-56—entitled "Goodyear TBA Plan" (26 pp.).

Hearing Examiner Kolb: Let the documents be marked as requested.

(The documents referred to were marked Commission's Exhibits 80-R, 80-S, 80-T, 80-U, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240 A-D, 240 E-H, 241, 242, 243, 244, 245, 246, 44-C, 44-D, 44-E, 44-F, 44-G, and 247-B, for identification.)

Mr. Dias: I offer the foregoing exhibits.

Mr. Mason: No objection.

Mr. Ballard: No objection.

Hearing Examiner Kolb: There being no objection, the documents will be received in evidence as Commission Exhibits 80-R, S, T, U, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240-A through D, 240-E to H, 241, 242, 243, 244, 245, 246, 44-C, 44-D, 44-E, 44-F, 44-G, and 247-B.

(The documents referred to, heretofore marked COMMISSION'S EXHIBITS 80-R through U, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240-A through D, 240-E to H, 241, 242, 243, 244, 245, 246, 44-C through G, and 247-B for identification, were received in evidence.)

315 Mr. Dias: The following stipulation has been agreed upon by counsel: Counsel for respondent, The Atlantic Refining Company ("Atlantic"), and counsel supporting the complaint agree and stipulate that if appropriate officers and employees of Atlantic were called as witnesses by counsel supporting the complaint in this proceeding, and asked the following questions, such witnesses would testify as follows, and that the following may be accepted by the Commission for the purpose of its determination and order herein as if such witnesses had so testified and in lieu of such testimony. The statements set forth below are made solely for the purpose of this proceeding or any review thereof, and for no other action, case or proceeding.

316 CX 5A

Q. "Identify Neall."

A. In August 1949, F. M. Neall was Manager of Product Sales & Sales Development Division, Domestic Marketing Department, Atlantic.

CX 7

Q. "Identify E. R. Cox, Jr., Leon Serven, W. F. Stotz."

A. As of May 1950—E. R. Cox, Jr. was Manager, Sales Promotion Section, Atlantic. Leon Serven was Assistant Controller, Controller's Office—Domestic, Atlantic. W. F. Stotz was Senior Attorney, Legal Department, Atlantic.

CX 9A-E

Q. "Identify as to date, author, etc."

A. CX 9A-C was prepared by S. J. Heideman at some time prior to Atlantic's decision to test the sales commission plan in the test districts.

CX 9D-E is a separate document which was prepared by S. J. Heideman at some time prior to the commencement of the sales commission test program in the Newark District.

CX 9D

Q. "Identify Sales Promotion Section."

A. See under CX 179D.

CX 29

Q. "Dates."

A. Letters in this form were sent out by Atlantic 317 in the New England, New York, and Philadelphia-New Jersey Regions, except in the Newark, New Jersey District, on or about February 20, 1951.

CX 35 and 36

Q. "Develop further data re Schrader inventory."

A. Further data are unobtainable.

Q. "Is Schrader part of the Goodyear TBA line?"

A. Yes.

CX 39

Q. "Was document enclosed with CX 38?"

A. No.

CX 47B

Q. "Obtain copy of Atlantic-Lee Guaranty Forms."

A. A copy of that form is attached. (CX 47E.)

CX 48A-F

Q. "Who do TBA Bulletins go to?"

A. TBA bulletins are directed to Atlantic's TBA Coordinators in the various regions.

Q. "Is copy sent to Goodyear?"

A. Only occasionally.

Q. "Who are Automotive Missionary Men? Atlantic Refining Co. or Goodyear or both?"

A. They were employees of Goodyear.

Q. "What fan belts did Atlantic sell prior to commission plan?"

A. "Thermoid" brand, made by the Thermoid Corp., Trenton 8, N. J.

318 Q. "Review Progress Report."

A. See part 6 of stipulated testimony of Atlantic personnel.

CX 84A, B

Q. "Check current regions, etc."

A. There have been no material changes in the territories of the regions since the exhibit was prepared.

CX 100A-C

Q. "Distribution of document."

A. This was a memorandum for Mr. Heideman's file and, as far as can be ascertained, was not distributed to anyone else.

Q. "Describe Sales Promotion Department."

A. See under CX 179D.

CXID 101A-Z20

Q. "Origin, etc. Is basic data available?"

A. Reports are available for interviews believed to have been conducted in Boston, Mass., Fall River, Mass., Johnstown, Pa., Philadelphia, Pa., Pittsburgh, Pa., and Trenton, N. J. The Atlantic employee witness having the best knowledge of the origin and method is J. L. McIntire.

CX 102A

Q. "Identify J. M. McIlvain."

A. In August 1949, J. M. McIlvain was Chief Industrial Engineer, Industrial Engineering Department, Atlantic.

CX 104A-C

Q. "Firestone agreement, 3/30/50. Review C, D, 319 CE, DE, B and E classifications."

A. The agreement describes such classifications correctly.

CX 107

Q. "Identify Keen, Stotz, and Johns."

A. In February 1950—

William Keen was Manager, Operations Division, Domestic Marketing Department, Atlantic.

William F. Stotz was Senior Attorney, Legal Department, Atlantic.

Roy W. Johns was General Counsel, Atlantic.

CX 108A-J

Q. "Origin, date of meeting."

A. This document is believed to have been prepared by S. J. Heideman for presentation at the meeting of March 17, 1950, at which the persons listed on CX 109 were in attendance.

Q. "Explain antifreeze policy (CX 108I)."

A. Atlantic had decided to continue to sell antifreeze on a purchase and resale basis.

CX 109A-I

Q. "Explain policy on 'close out' merchandise (CX 109B(b))."

A. See paragraph 2.14 of stipulated testimony of Atlantic personnel.

Q. "Identify Mr. Stockton."

A. As of March 1950, William Stockton was Credit Manager, Domestic Marketing Department, Atlantic.

320 CX 109H

CX 110

Q. "Identify SJH."

A. In March 1950, S. J. Heideman was Manager, TBA Section, Atlantic.

CX 111

Q. "Identify SJH and W. J. Griffiths."

A. In April 1950—

S. J. Heideman was Manager, TBA Section, Atlantic.

William J. Griffiths was Manager, Eastern Pennsylvania Region, Atlantic.

321-A CX 112, 113

Q. "Check origin, etc., and termination dates."

A. It cannot be determined by whom these documents were prepared.

The arrangement was terminated as indicated under CX 139A-B.

CX 114A

Q. "Obtain list, referred to under (3), of Firestone District Managers and District Offices."

A. The list referred to cannot be found.

Q. "Obtain Forms S-468."

A. A copy of this form is included in the data which were furnished in response to List C, par. 8(h).

CX 114B

Q. "Check accounts classifications on which commissions are paid."

A. The classifications in Par. 7 of CX 114B are correct as stated, except that the outlet designations have been changed as indicated by paragraph 2.1 of the stipulated testimony of Atlantic personnel.

321-B CX 114D

Q. "Identify personnel listed."

A. As of May 1950—

B. M. Boor was Manager, Western Pennsylvania Region, Atlantic.

Leon Serven was Assistant Controller, Controller's Office—Domestic, Atlantic.

S. J. Heideman was Manager, TBA Section, Atlantic.

J. C. Rigby was in the Auditing Department, Atlantic.

J. M. McAllister was in the Sales Statistical Section, Accounting Department, Atlantic.

J. P. Miller, Jr. was General Auditor, Atlantic.

W. J. Griffiths was Manager, Eastern Pennsylvania Region, Atlantic.

C. P. Mumma was Manager, Sales Group, Eastern Pennsylvania Region, Atlantic.

G. A. Fearn was TBA Coordinator, Eastern Pennsylvania Region, Atlantic.

R. S. Zinn was Manager, Wilmington, Delaware District, Domestic Marketing Department, Atlantic.

CX 115

Q. "Identify writer."

A. This document was probably written by **E. E. Sickles**, then an Assistant Chief Accountant in the Phil-

adelphia Sales Accounting Division of the Accounting Department, Atlantic.

Q. 'What are 'O' Type dealer supply points referred to?'

322 CX 116B

Q. "Identify Mr. Burkett."

A. In September 1950, H. C. Burkett was Manager, Erie, Pennsylvania District, Domestic Marketing Department, Atlantic.

CX 117

Q. "Origin, etc. Who made corrections?"

A. This document is believed to have been prepared and corrected by S. J. Heideman, Manager, TBA Section, Atlantic, and to have been a working paper for his own use.

CX 118A

Q. "Identify Stotz, Cox, Griffiths."

A. In March 1950—

W. F. Stotz was Senior Attorney, Legal Department, Atlantic.

E. R. Cox was Manager, Sales Promotion Section, Domestic Marketing Department, Atlantic.

W. J. Griffiths was Manager, Eastern Pennsylvania Region, Atlantic.

Q. "Obtain data referred to in paragraph 2 of letter."

A. The data, if compiled, cannot be located.

CX 120

Q. "Identify Griffiths and RMT."

A. In July 1950—

W. J. Griffiths was Manager, Eastern Pennsylvania Region, Atlantic.

R. M. Taitt was Office Assistant, TBA Section, Atlantic.

323 CX 127A-E, CX 127F-H

Q. "Review for origin, distribution, etc."

A. CX 127A-E were prepared by Goodyear, and CX 127F-H are believed to have been prepared by Goodyear. Apparently, these copies were distributed to S. J. Heideman, Manager, TBA Section, Atlantic, and were given by him to H. K. Paxson, Assistant Manager of that section.

CX 127H

Q. "Retroactive accounts. Explain."

A. Occasionally there is delay in submitting or securing approval of a G-1209 with respect to a petroleum company account. This was more frequent in the early stages of the program. In such a case, a belated G-1209 was prepared, pre-dated to the commencement of the account's TBA purchases, so that the oil company could collect the commissions due on such purchases.

CX 128A-B

Q. "Origin. Identify Sanborn."

A. Author: S. J. Heideman, Manager, TBA Section, Atlantic.

In May 1950, A. R. Sanborn was Manager, Newark, New Jersey District, Domestic Marketing Department, Atlantic.

CX 130-B

Q. "Obtain list of dealers and distributors in Newark for solicitation, and also list of those signed."

A. Neither of such lists can be located.

Q. "Describe Sales Statistical Section."

324 A. This is a section of the Marketing Accounting Division of the Accounting Department, which performs the various statistical functions required by the Domestic Marketing Department.

Q. "Obtain monthly G-1204 lists for Newark for June and July 1950."

A. A copy of each of these lists is attached, covering the

three periods June 12-20, June 21-July 20, and July 21-August 20. (CX 226A-H, 227A-K, 228A-K, respectively).

Q. "When did Newark plan start?"

A. June 12, 1950.

CX 132

Q. "Identify the following:"

A. In August 1950—

7 W. J. Griffiths was Manager, Eastern Pennsylvania Region, Atlantic.

H. H. Ingersoll was Manager, Southern Region, Atlantic.

H. W. Jollie was Manager, New England Region, Atlantic.

E. R. Cox, Jr. was Manager, Sales Promotion Section, Domestic Marketing Department, Atlantic.

C. P. Mumma was Manager, Sales Group, Eastern Pennsylvania Region, Atlantic.

W. W. Pleasants was Manager, Plant Development and Maintenance Section, Operations, Domestic Marketing Department, Atlantic.

Ed Stanton was Supervisor, Direct Marketing Sub-Group, Philadelphia-New Jersey Region, Atlantic.

Q. "Describe Service Station Committee."

A. This is an advisory committee which recommends policies concerning the appearance and arrangement of facilities of Atlantic service stations.

CX 134

Q. "Origin, date of survey, areas included."

A. This survey was made in July and August 1950 by the Sales Research Section at the request of the Domestic Marketing Department, and was conducted by mail among dealers and distributors in the Newark, Wilmington and

Erie districts. See paragraph 5.2 of stipulated testimony of Atlantic personnel.

Q. "Describe Sales Research Section."

A. This is a section in the Domestic Marketing Department in Philadelphia which performs the research functions of that department.

Q. "Who was in charge of the section when the survey was made?"

A. Noble Hall.

CX 135A-C

Q. "Origin, date, distribution, etc."

A. See paragraph 5.4 of stipulated testimony of Atlantic personnel.

CX 135A

Q. "Who are Chairman and Committee (and members) referred to in first paragraph?"

A. The Committee was composed of regional TBA coordinators. The Chairman was S. J. Heideman. See under CX 135A-C.

Q. "Obtain data itemized under 1(1-7)."

326 A. The listing was merely of suggested steps for possible ultimate action when and if the contemplated program was adopted. There is no indication that the items listed were ever compiled or assembled.

CX 135B

Q. "Explain E."

A. See paragraph 6.2 of stipulated testimony of Atlantic personnel.

Q. "Explain K."

A. The Standards of Operation are policies prepared by the Service Station Committee. See explanation under CX 132.

Q. "Explain M."

A. If and when the sales commission plan in contem-

plation was adopted, it was expected that the Atlantic regions and districts affected would arrange to return for credit all unused signs, stands, merchandise, etc., which they had in stock.

CX 135C

Q. "Explain O."

A. See stipulated testimony of Atlantic personnel, paragraph 6.6.

CX 136A

Q. "Who attended the February 14, 1951 meeting?"

A. This exhibit does not refer to a meeting. On the date mentioned a decision was made by the Domestic Marketing Department, as indicated by the document.
327 See paragraph 5.6 of stipulated testimony of Atlantic personnel.

CX 136B

Q. "Identify survey referred to."

A. The survey referred to is that reflected by CX110 101A-Z20.

Q. "Which 4 regions wanted new program?"

A. Eastern Pennsylvania—Philadelphia, New Jersey—Western Pennsylvania—Southern.

See paragraph 5.3 of stipulated testimony of Atlantic personnel.

CX 137A E

Q. "Origin, date, distribution, etc."

A. This was prepared by the New York Region in connection with its 1951 Sales Plan (CX 155A H).

Q. "Explain I, 2, e."

A. The operations procedures prescribe the care and maintenance of Atlantic's property and safety precautions to be observed.

Q. "Explain I, 4."

A. This was an informal report of the erection of competitive service stations.

Q. "Explain I, 6."

A. The dealer salesman was expected to assist in keeping at a minimum the outstanding balances owed to Atlantic by its dealers by recommending credit limits applicable to his dealers and by making collections from them when accounts became overdue.

328 Q. "Explain I, 8."

A. B 30 is the standard Atlantic ticket evidencing a delivery of merchandise to a dealer or distributor. For the purpose of auditing delivery and collection reports of its drivers, Atlantic had its salesmen secure from its dealers periodically copies of such tickets left with them.

Q. "Explain I, 12."

A. The dealer salesman is expected to encourage each dealer to operate his station in the most effective manner, and to make specific recommendations to that end.

Q. "Explain I, 13, a."

A. See explanation for paragraph III D of CX 155A H.

Q. "Explain I, 14, a."

A. "Unit control" was a system of inventory control available for use by dealers.

Q. "Explain I, 14, b."

A. The phrase "minimum stock standards" refers to the minimum inventories of products which should be maintained under good operating practice.

Q. "Explain I, 14, c."

A. The dealer salesman is expected to recommend various steps for keeping a dealer's stock in salable condition, such as storage and display techniques which will avoid package damage, return of shopworn merchandise for re-packaging, and the practice of selling the oldest stock first.

329. Q. "Explain I, 19, c."

A. The dealer salesman is expected to report informally, and as appropriate action by Atlantic's competitors.

Q. "Explain II."

A. The District Dealer Bank is a list maintained by each district office of persons who are interested in becoming Atlantic lessee dealers.

Q. "Explain III, 1."

A. The guide, copies of which are no longer available, outlined the respective responsibilities of various Atlantic employees in assisting a new dealer to become established.

Q. "Explain IV, 3."

A. To the extent that a dealer maintains books establishing sales goals and measuring performance and makes them and his bookkeeping records available, the salesman is expected to review the data and advise the dealer how to improve his efficiency and sales effectiveness.

Q. "Explain V, 3."

A. The service station school then current is described under paragraph II A of CX 155A H.

Q. "Explain V, 4 and V, 7."

A. The Retail Instructor was equivalent to the present service salesman and provided on-the-job instruction. See paragraph 1.5 of the stipulated testimony of Atlantic personnel.

Q. "Explain V, 8."

330 A. The merchandising and sales promotion instruction involved the general principles of such subjects and, as such, was applicable to all products regardless of brand.

Q. "Explain V, 10."

A. The salesman is expected to make certain that each dealer is aware of prices for goods and services which are being charged and services which are being rendered by

his competitors, and to advise the dealer to the extent the latter desires, how to maintain profitable operations under competitive conditions.

Q. "Explain V, 11, a."

A. To the extent that an annual review consultation does not assist a dealer in establishing sales goals and merchandising programs for particular products or services, the salesman is expected to aid the dealer in that regard, but only to the extent the dealer wishes.

Q. "Explain V, 13."

A. The provision seems self-explanatory.

CX 138

Q. "Identify SJH."

A. In June 1951, S. J. Heideman was Manager, TBA Section, Atlantic.

CX 139A B

Q. "Identify SJH."

A. In January 1952, S. J. Heideman was Manager, TBA Section, Atlantic.

331 Q. "Check adjustment cut-off date of March 31, 1952."

A. The cut-off date for Lee tire adjustments was July 31, 1952 and for Exide batteries was July 1, 1952.

Q. "Identify C. O. Domestic and J. O. Long."

A. Controller's Office—Domestic, of which J. O. Long was Chief Accountant.

Q. "Is antifreeze under S. C. P. with Goodyear * * *"

A. Not in the case of Atlantic.

CX 140

Q. "Identify B 139's."

A. B 139 is the designation of the sales slip form used by dealers to make sales on credit to Atlantic credit card holders.

A typical B 139 form as revised in October 1951, is attached. (CX 140AC)

CX 141, 142

Q. "What was correct information?"

A. See paragraphs 6.6 and 6.7 of stipulated testimony of Atlantic personnel.

CX 143, 144

Q. "Identify William Stockton and SJH."

A. In July and November 1951, William Stockton was Credit Manager, Domestic Marketing Department, Atlantic.

At the same times, S. J. Heideman was Manager, TBA Section Atlantic.

332 CX 145

Q. Identify Taitt and Stockton."

A. In June 1952, R. M. Taitt was Office Assistant, TBA Section, Atlantic, and William Stockton was Credit Manager Domestic Marketing Department, Atlantic.

Q. "Obtain list attached to Taitt's letter of February 11, 1952."

A. Attached is a copy of the letter of February 11, 1952 with its attached list. (CX 145A D)

CX 146A B

Q. "Origin, date, distribution, etc."

A. This is part of the minutes of a regular meeting of the staff of the Domestic Marketing Department, i.e., the Vice President of Marketing, the Assistant General Manager of Domestic Marketing, and the Managers of the principal units of the department. Such minutes are normally distributed to members of the staff, the Sales Personnel Manager, and the Foreign Marketing Manager.

333 The date of the meeting is as indicated on the document itself.

Q. "Explain reference in 4(d)(1) to 'Class 2 Program'."

A. The phrase "Class 2. Program" referred to efforts then being made by Atlantic to strengthen lessee dealer marketing.

CX 148, 149, 150

Q. "Review re distribution."

A. The distribution specified in CX 148 was made.

Q. "Identify E. R. Cox, Jr."

A. As of February 1951, E. R. Cox, Jr. was Manager, Sales Promotion Section, Domestic Marketing Department, Atlantic.

CX 151

Q. "Identify Taitt."

A. In March 1951, R. M. Taitt was Office Assistant, TBA Section, Atlantic.

CX 153A B

Q. "Identify R. M. Taitt."

A. In April 1951, R. M. Taitt was Office Assistant, TBA Section, Atlantic.

Q. "Are distribution points still the same?"

A. Yes.

CX 154

Q. "Identify personnel."

A. As of January 1951—

Porter B. Caldwell was Manager, Gasoline Solvents and Naptha Section, Domestic Marketing Department, Atlantic.

334 J. J. Mulvey was Manager, Fuel Oil Section, Domestic Marketing Department, Atlantic.

H. B. Stone was Manager, Lubricants, Wax and Process Section, Domestic Marketing Department, Atlantic.

CX 155A-H

Q. "Author."

A. The plan was prepared by the New York Region.

Q. "Obtain complete sales plan plus appendices."

A. The masked portions of CX 155A-H relate to motor oil, kerosene, furnace oil, residual oils, and technical products, and are thus irrelevant.

Appendices A-1—A-6 represent the table on CX 155B-D broken down for each of the 6 districts in the New York Region and would, therefore, seem too detailed and trivial for inclusion here. Appendix B relates only to gasoline and is omitted as irrelevant. Copies of Appendices C, D and E (referred to in paragraph III F of CX 155) are attached (CX 155I, 155J-K, and 155L-M, respectively).

Q. "Were similar plans for other regions set up?"

A. Yes.

CX 155B.

Q. "Gallons?"

A. Yes.

CX 155C, D

Q. "What is 1 unit—T & B?"

A. See Appendix C to the Plan.

335 Q. "Were stations assigned quotas on this basis?"

A. No.

CX 155E-G

Q. "Explain II A."

A. At the time, Atlantic's Red, White & Blue course was a one week informal dealer training program in service station operation, including the technical aspects of automobile servicing. In New York, the retail instructors were to expand their instruction to include the subjects mentioned, namely product merchandising and display.

Q. "Explain II D."

A. The Four Step Method of Instruction is an instructional technique, having the following primary steps:

1. Prepare the student.
2. Present the operation to him.

3. Try out his performance.

4. Follow up on his performance after completion of the instruction.

Q. "Explain II E."

A. The retail instructors were to utilize the D. P. A. CASE plan in teaching dealers how to sell. These letters are initials for instructive phrases and words as follows:

D—Determine the customer's need.

P—Point out that need to the customer.

A—Ask him to buy.

336 CASE stands for "Convenience," "Appearance," "Safety," and "Economy."

Q. "Explain III A."

A. Event openings are promotional devices for attracting customers, utilizing attractive station decoration, advertising, publicity, and possibly premiums.

Q. "Explain III B."

A. Efforts were to be made to modernize existing leased stations in accordance with currently accepted standards of appearance and layout.

Q. "Explain III C."

A. Each Marketing District was to maintain a list of potential lessee dealers and employees for such dealers, and to have its personnel constantly alert to opportunities to recruit such dealers and employees.

Q. "Explain III D."

A. The Dealer Annual Review is an annual informal meeting of each lessee dealer, his salesman, the supervisor of the salesman, and the Dealer Sales Manager, at which the dealer's prior performance and future plans are discussed and the dealer is advised how to achieve greater efficiency and profitability.

Q. "Explain III E."

A. Facilities were to be made available at which the training described under II A hereof could be provided.

Q. "Explain III F."

337 A. Quarterly dealer progress reports were made to check on the performance of lessee dealers. A copy of the report form is attached, designated "Appendix E."

Q. "Explain III G."

A. Prizes were to be awarded to dealers for excellence in service, and dealer performance was to be measured under normal operating conditions by Atlantic personnel visiting stations as customers.

Q. "Explain IV B."

A. When a new contract dealer is added Atlantic must incur expense for pumps and other equipment. A formula was used to determine whether the anticipated sale of petroleum products by a particular dealer would justify Atlantic's incurring the necessary expense and hence taking on that dealer.

Q. "What is C. R. S. (VI)?"

A. Commission Route Salesman.

Q. "Explain X A."

A. In establishing region-wide sales goals for TBA, consideration was given not only to normal sales increases by established outlets but also to sales by new outlets.

Q. "Explain X B."

A. The formulas referred to were the ratios stated in sections VI, VII, and VIII on CX 155C-D.

Q. "Explain X C."

A. The coordinator's plan provided for the training of dealers and Atlantic personnel in the features and application of new products, sales techniques, etc. through clinics and double teaming in the field with salesmen, and for assistance to dealers in planning events, holiday promotions, mass displays, and budget selling plans.

Q. "Explain XI."

A. This section lists the meetings to be held during the year and the approximate frequency. Paragraphs A and

B refer respectively to meetings of Atlantic district and regional managers and to meetings of Atlantic district personnel.

CX 156

Q. "Origin, distribution, etc."

A. This document was part of the 1951 New York Region Sales Plan (CX 155A-H).

Q. "Refer to Sales & Operations Groups."

A. Sales Groups are personnel responsible for the Sales activities of the Domestic Marketing Department.

Operations Groups are personnel of the Operations Department, which is described under CX 183 hereof.

Q. "To whom does policy apply (Class 2, 3)?"

A. The policy applied to Class 2 stations in its entirety and to Class 3 stations as provided in paragraph (2) and in the first sentence of paragraph (3).

CX 157

Q. "Identify HKP (Paxson)."

339 A. In February 1951, H. K. Paxson was Assistant Manager, TBA Section, Atlantic.

Q. "Refers to appendices, etc."

A. See under CX 155A-H.

CX 159

Q. "Identify E. R. Cox and Mr. Fritsch."

A. In March 1951

E. R. Cox was Manager Sales Promotion Section, Domestic Marketing Department, Atlantic.

Paul R. Fritsch was in the Identification Division, Goodyear.

Q. "Describe Service Station Committee."

A. See under CX 132.

CX 160A

Q. "Identify J. O'Neill."

A. In June 1951, J. O'Neill was Division Petroleum Representative, Philadelphia, Goodyear.

Q. "Obtain description of Territories 7G, etc."

A. The various territories indicated by the number and letter symbols are Atlantic's salesmen's territories. Their respective areas are as indicated by the addresses of the retail outlets listed under each on CX 160 C-P.

Q. "Obtain New Jersey list."

A. A copy of the list is attached (CX 160Q-Y).

CX 161

Q. "Identify SJH."

340-A A. In July 1957, S. J. Heideman was Manager TBA Section, Atlantic.

Q. "Obtain list of 46 dealers."

A. A copy of the list is attached (CX 161A-B).

Q. "Advise as to action taken."

A. On July 24, 1951 the respective managers of Atlantic's Philadelphia-Suburban and South Jersey Districts were requested to have their personnel communicate with the 46 dealers and to report the results of such action. No reports having been received from the districts by August 20, 1951, follow-up letters were sent both managers on that date (see CX 162). On October 15, 1951, Goodyear sent Atlantic a list of stations not yet identified, which included all of the 46 dealers except the following (see CX 167):

P. Di Cicco, 26th & Snyder Sts., Philadelphia, Pa.

Henry's, Chester & McKinley, Norwood, Pa.

A. E. Mapes, 9th & Bay, Ocean City, N. J.

S. Van Sant, Townsend Inlet, N. J.

I. Wells, 34th & Asbury, Ocean City, N. J.

is not known whether or not identification arrangements were made with the 5 dealers listed above prior to October 15, 1951.

Q. "Obtain names of those who were eventually signed."

A. The lists attached to CX 160A indicate that all the 46 dealers signed Goodyear contracts.

Q. "Were 46 dealers all Class 3?"

340-B A. No.

CX 165

Q. "Obtain list of N. E. refusals."

A. A copy of the list (on 2 sheets) is attached (CX 165A-G).

CX 167

Q. "Obtain attached lists."

A. A copy of each of the lists is attached (CX 167A-M).

CX 170A-F

Q. "Were refusals all Class 3 dealers?"

A. No.

Q. "How many were later identified?"

A. This information is unobtainable.

Q. "What are valance structural difficulties?"

341 A. "Valance structural difficulties" refers to buildings of retail outlets which lack the type of windows on which valances can be applied.

CX 171A-D

Q. "Were refusals Class 3 dealers?"

A. Refusals included Class 2 and Class 3 dealers.

CX 172A-B

Q. "Were refusals Class 3 dealers?"

A. Refusals included Class 2 and Class 3 dealers.

CX 161-172A-B

Q. "Which of these dealers were later identified by Goodyear?"

A. No records were kept with respect to which dealers were later identified. Only with respect to CX 172B do any Atlantic personnel have any recollection, and of the

dealers listed thereon the TBA Coordinator recalls that at least the following subsequently displayed Goodyear identification:

Frank Funk
F. H. Buongiorno
Ray Cochran
Ken Alt

CX 173

Q. "Obtain TBA Bulletin #17, June 1, 1951."

A. A copy is attached. (CX 173A-E.)

CX 174, 175

Q. "How many outlets were signed as Goodyear 342 dealers or associate dealers?"

A. This information is unobtainable.

CX 177

Q. "Who is Jennings Bros.? Explain."

A. See Goodyear comments on this exhibit.

CX 179C

Q. "Obtain form referred to in D. general."

A. A copy is attached. (CX 179J.)

Q. "Was this form used in other two regions?"

A. No.

CX 179D

Q. "Describe Sales Promotion Section."

A. This is a section of the Domestic Marketing Department which provides sales promotion service to that department. To that end it devises and prepares programs, projects, and material designed to increase the sale of products and services by Atlantic retail outlets of all types.

CX 179E

Q. "Explain Training Program Plan."

A. This refers to the program for conveying to Atlan-

tic field sales personnel in areas outside the three original test districts information concerning the mechanics of the sales commission plan and the products involved.

CX 179G

Q. "Explain XV 2."

343 A. At the time, lessee dealers in the New York Region paid as rental for their stations an amount equal to 6% of their gross dollar income from sales of products (other than gasoline and Diesel fuel) without regard to brand and from services rendered. Hence, if their TBA sales were reduced, rentals received by Atlantic would likewise be smaller.

Q. "Identify U. S. I."

A. U. S. Industrial Chemicals Co., Atlantic's source of menthanol or evaporative type antifreeze.

Q. "Obtain recommendation under XVII."

A. A copy of the recommendation of August 17, 1951, is attached. (CX 179K.)

CX 180, 181, 182

Q. "Describe 'Fram' and 'Purolator'."

A. "Fram" and "Purolator" are brand names of automotive oil filter equipment manufactured by Fram Corp., Providence 16, R. I. and Purolator Products, Inc., 970 New Brunswick Ave., Rahway, N. J., respectively.

CX 183

Q. "Describe Operations Department, Sales Development Committee, AR 50 design station."

A. The Operations Department is responsible for constructing, equipping and maintaining the plants, service stations and other properties under the jurisdiction of the Domestic Marketing Department.

344 The Sales Development Committee is an advisory committee of the Regional Sales Managers which makes recommendations to the Domestic Marketing Department

of action designed to increase the sales of products by Atlantic directly and through Atlantic outlets.

AR 50 is the designation of the service station design adopted by Atlantic marketing management in 1950.

CX 186

Q. "Identify Mr. Bergh."

A. In July, 1952, Charles F. Bergh was a buyer in Atlantic's Purchasing Department.

CX 187

Q. "Identify all names listed."

A. In September 1952—

W. L. Schmidt was Chief Accountant, Western Pennsylvania Region, Atlantic.

E. E. Sickels was Chief Accountant, Eastern Pennsylvania Region, Atlantic.

Fred Wanders was Chief Accountant, Southern Region, Atlantic.

J. O. Long was Chief Accountant, Controller's Office—Domestic, Atlantic.

345 Charles F. Bergh was a buyer in Atlantic's Purchasing Department.

J. P. Miller, Jr. was General Auditor, Atlantic.

R. G. Mulholland was Manager, TBA Section, Atlantic.

346 CX 170B

Q. "State the number of Class 2 and Class 3 dealers listed under the heading 'Refusals'."

A. Class Number

2 3

3 33

CX 171B

Q. "State the number of Class 2 and Class 3 dealers listed under the heading 'Refusals'."

A.	Class	Number
	2	0
	3	6

CX 171C

Q. "State the number of Class 2 and Class 3 dealers listed under the heading 'Refusals'."

A.	Class	Number
	2	5
	3	7

CX 172B

Q. "State the number of Class 2 and Class 3 dealers listed under the heading 'Refusals'."

A.	Class	Number
	2	4
	3	0

347 Q. "State the classifications of the 4 dealers who are recalled to have subsequently displayed Goodyear identification."

A.	Dealer	Class
	Frank Funk	2
	F. H. Buongiorne	2
	Ray Cochran	2
	Ken Alt	3

348 Mr. Ballard: May it please the Examiner, with reference to the foregoing stipulations, I would like to point out that at page 62 of the record I stated with respect to Exhibit 137 that Atlantic did not admit that the document was ever officially accepted, promulgated, or used. I further stated that Atlantic was not certain as

to the circumstances under which that document had been prepared. Subsequent investigation has disclosed that the document was in fact adopted by the New York region in connection with its 1951 sales plan, and the correct information with respect to the document is contained in the foregoing stipulation under an appropriate reference to CX 137-A through E.

Mr. Dias: Mr. Examiner, I offer for identification the following Commission documents: As 47-E, Atlantic-Lee Guaranty Form. This appears in paragraph 3 of the Stipulation.

As Commission Exhibit 226 A-H, Letter dated July 7, 1950 from Paul Castleberry, Jr., District Operating Manager (Goodyear, Newark, New Jersey) to Mr. Leon Serven, ARCo, attaching G-1204 data for the period June 12-20, 1950. (CX 226 B-H.) This appears in paragraph 13 of the Stipulation.

As Commission Exhibit 227 A-K, Letter dated August 18, 1950, from Assistant Controller, ARCo, to Goodyear in re Form G-1204 data for the Newark District, June 21—July 20, 1950. (CX 227 B-K:) This appears in paragraph 13 of the Stipulation.

349 As Commission Exhibit 228 A-K, Goodyear Form G-1204 data for the Newark District, July 21—August 20, 1950. This appears in paragraph 13 of the Stipulation.

As Commission Exhibit 140 A-C, ARCo Form B-139, revised October, 1951. This appears in paragraph 23 of the Stipulation.

As Commission Exhibit 145 A-D, ARCo inter-office letter dated 2/11/52 from R. M. Taitt to Mr. William Stockton, in re "Credit Card Sales", with attached list. (CX 145 B-D.) This appears in paragraph 24 of the Stipulation.

As Commission Exhibit 155 I-M, Appendices C (CX 155 I), D (CX 155 J, K); E (CX 155 L) and Summary (CX 155 M), to 1951 New York Region Sales Plan. This appears in paragraph 27 of the Stipulation.

As Commission Exhibit 160 Q-Y, South Jersey District Dealer list referred to in CX 160 A. This appears in paragraph 34 of the Stipulation.

As Commission Exhibit 161 A-B, List of 46 Dealers referred to in CX 161. This appears in paragraph 35 of the Stipulation.

As Commission Exhibit 165 A-C, Letter dated August 28, 1951, from A. P. DeWolf (DeWolf Valance Company) to Goodyear, Attention J. O'Neil, enclosing two lists referred to in letter. This appears in paragraph 35a of the Stipulation.

As Commission Exhibit 167 A-M, List of Atlantic 350 Dealers in various Districts referred to in CX 167.

This appears in paragraph 35a of the Stipulation.

As Commission Exhibit 173 A-E, ARCo.'s "Goodyear T. B. A. Bulletin #17", dated June 1, 1951 (CX 173 A-C), enclosing Goodyear Progress Reports through 5/21/51 (CX 173 D) and 5/28/51 (CX 173 E). This appears in paragraph 37 of the Stipulation.

As Commission Exhibit 179 J, New York Region Form, unidentified by number, entitled "Atlantic—Goodyear Accounts (Signed on G-1209)", referred to in "D. General" on CX 179 C. This appears in paragraph 37 of the Stipulation.

As Commission Exhibit 179 K, Recommendation of 8/17/51, commencing "Petroleum Representative—Review and Recommendation)", referred to in "XVII Petroleum Representative" on CX 179 G. This appears in paragraph 37 of the Stipulation.

Hearing Examiner Kolb: The documents will be marked for identification as described.

(The documents referred to were marked Commission's Exhibits 47-E, 226 A-H, 227 A-K, 228 A-K, 140-A-C, 145 A-D, 155 I-M, 160 Q-Y, 161 A-B, 165 A-C, 167 A-M, 173 A-E, 179-J, and 179-K for identification.)

351 Mr. Dias: I offer the above described documents in evidence.

Hearing Examiner Kolb: Is there objection?

Mr. Ballard: No objection to any of the exhibits.

Mr. Mason: Goodyear's position as to the documents so offered, as to 47-E, no objection.

Hearing Examiner Kolb: 47 will be received in evidence as Commission Exhibit 47-E.

(The document referred to, heretofore marked COMMISSION EXHIBIT 47-E for identification, was received in evidence.)

Mr. Mason: As to 226-A through H, no objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 226-A to H.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 226-A through H for identification, was received in evidence.)

Mr. Mason: 227-A to K, no objection.

Hearing Examiner Kolb: The document will be received in evidence.

(The document referred to, heretofore marked COMMISSION EXHIBIT 227-A through K for identification, was received in evidence.)

Mr. Mason: As to Exhibit 228-A to K, no objection.

Hearing Examiner Kolb: The document will be received in evidence.

(The document referred to, heretofore marked COMMISSION EXHIBIT 228-A to K for identification, was received in evidence.)

Mr. Mason: As to offered Exhibit 140-A through C, no objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission's Exhibit 140-A through C.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 140-A through C for identification, was received in evidence.)

Mr. Mason: As to Commission Exhibit 145-A through D, we have the same objection that we had I believe to 145, that it was a document which was internal to Atlantic; that there is no indication that it was received by Goodyear or known to Goodyear, and that it should not be binding on Goodyear.

Hearing Examiner Kolb: The document 145-A to D will be received in evidence as to Atlantic, and subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION EXHIBIT 145-A through D for identification, was received in evidence.)

Mr. Mason: As to offered Exhibit 155-I to M, Goodyear has the same objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 155-I to M as to Atlantic, subject to motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION EXHIBIT 155-I through M for identification, was received in evidence.)

Mr. Mason: As to 160-Q to Y, we have no objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 160-Q to Y.

(The document referred to, heretofore marked COMMISSION EXHIBIT 160-Q to Y for identification, was received in evidence.)

Mr. Mason: As to Commission Exhibit 161-A and B, this is a list which appears to be an internal Atlantic document. We have no indication from our own records that we ever received it, and accordingly object to its being binding on Goodyear.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 161-A and B as to Atlantic, and subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked COM-

MISSION EXHIBIT 161-A and B for identification, was received in evidence.)

Mr. Mason: As to 165-A through C, we have no objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 165-A through C.

(The document referred to, heretofore marked COMMISSION EXHIBIT 165-A through C for identification, was received in evidence.)

Mr. Mason: As to 167-A through M, we have no objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 167-A through M.

(The document referred to, heretofore marked COMMISSION EXHIBIT 167-A through M for identification, was received in evidence.)

Mr. Mason: As to 173-A through E, it is our understanding these are internal Atlantic documents as to which Goodyear had no notice, and therefore accordingly object.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 173-A through E as to Atlantic, subject to a motion to strike by Goodyear.

Mr. Mason: As to 179-J, it appears to be a form as such. We haven't heretofore objected to Atlantic forms, but as I understand it this is connected up with an earlier document, 179-A to I, which is an internal memorandum of Atlantic, and I gather this is being introduced as an elaboration, and in that sense we do object to its introduction.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 179-J as to Atlantic, subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION EXHIBIT 179-J for identification, was received in evidence.)

Mr. Mason: As to 179-K, we have an objection, that it is an internal Atlantic document as to which there is no indication that Goodyear had notice.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 179-K, subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION EXHIBIT 179-K for identification, was received in evidence.)

356 Hearing Examiner Kolb: United States of America; Before Federal Trade Commission. In the Matter of The Goodyear Tire & Rubber Company, The Goodyear Tire & Rubber Company, Inc., and The Atlantic Refining Company, corporations. Docket No. 6486.

Stipulation re testimony of the Goodyear Tire & Rubber Company, and The Goodyear Tire & Rubber Company, Inc. ("Goodyear") personnel.

Counsel for respondent, The Goodyear Tire & Rubber Company, and The Goodyear Tire & Rubber Company, Inc. ("Goodyear"), and counsel supporting the Complaint agree and stipulate that if appropriate officers and employees of Goodyear were called as witnesses by counsel supporting the Complaint in this proceeding, such witnesses would testify as follows, and that the following may be accepted by the Commission for the purpose of its determination and order herein as if such witnesses had so testified and in lieu of such testimony. The statements set forth below are made solely for the purpose of this proceeding or any review thereof, and for no other action, case or proceeding. For the purpose of this stipulation both the Goodyear Tire & Rubber Company and the Goodyear Tire & Rubber Company, Inc., are referred to as "Goodyear".

357. Goodyear Response to Request for Additional Information Concerning Certain Exhibits.

CX 23

Q. "Date of Document."

A. January or February, 1950.

Q. "Obtain ten issues of Goodyear Merchandiser furnished Oil Company accounts."

A. Submitted herewith. (CX 23-C to 23-L, inc.)

Q. "(Obtain) special Service Station Edition of Goodyear 1950 Advertising Book."

A. Submitted herewith is a photostat copy of the cover and index page of Goodyear's 1950 Advertising Book. (CX 23M.) Goodyear knows of no "special Service Station Edition" of this book and believes the reference there to in CX 23 A is a reference to Goodyear's 1950 Advertising Book. This book contains 116 pages and Goodyear has been able to locate only one copy. This is available for inspection or copying, if necessary.

CX 25

Q. "Date, place, etc., of meetings."

A. Information is set forth on CX 24-B.

CX 26

Q. "Date, place, etc., of meetings."

A. Goodyear-Atlantic dealer meetings were held during March and April, 1951 in the following cities:

358 New England Region: Boston, Mass., N. Boston, Mass., S. Boston, Mass., Providence, R. I., Worcester, Mass., Springfield, Mass., Pittsfield, Mass., Hartford, Conn., Bridgeport, Mass., New Haven, Conn., Fall River, Mass.

New York Region: New York, N. Y., Buffalo, N. Y., Rochester, N. Y., Danville, N. Y., Syracuse, N. Y., Oneida, N. Y., Elmira, N. Y., Binghamton, N. Y., Watertown, N. Y., Malone, N. Y., Albany, N. Y., Newburgh, N. Y.

Philadelphia, Pa.-New Jersey Region: Philadelphia, Pa. (3 meetings), Trenton, N. J., Camden, N. J., Atlantic City, N. J.

CX 28

Q. "Date."

A. Shortly prior to February 27, 1951.

CX 30-31

Q. "Dates."

A. Shortly prior to February 27, 1951.

CX 35-36

Q. "Develop further data re Schrader Inventory. Is Schrader part of Goodyear TBA line, etc."

A. Schrader products were and still are part of the Goodyear TBA line. When Atlantic adopted the sales commission plan it had no need for its inventory of Schrader products. Goodyear was willing to take over this inventory and thought this was easier than the proposed arrangement whereby Atlantic would return the goods to Schrader.

359 CX 51

Q. "Obtain identification Form A-98101L."

A. Submitted herewith is the current version of Form A-98101L. (CX 51 A) No copies of the version in use as of 8/7/51 have been located.

CX 11

Q. "Identify."

A. This exhibit was written by R. W. Keil and J. W. Basista of Goodyear shortly prior to the commencement of

the Newark test program which commenced on June 12, 1950. It was intended to be a tentative outline for field representatives to guide them in organizing the test. R. W. Keil was then working on the Newark program. He is now a Goodyear Petroleum Representative in New York assigned to the Shell program. J. W. Basista is identified on the Goodyear list of "Names Appearing on Documents."

Q. "What is the extent of Newark District territory?"

A. Goodyear's Newark District consists of the following counties:

N. Y.: Orange, Rockland, Sullivan.

N. J.: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, Warren (except for Alpha and Phillipsburg).

CX 17

Q. "Identification Division, Advertising Department (Goodyear)—Describe function."

A. The chief function of the Identification Division, Advertising Department is to furnish to Goodyear dealers signs and display materials to identify them as sales outlets for Goodyear products.

CX 18

Q. "Was Suburban Oil Co., Mt. Vernon, N. Y. signed to Goodyear contract?"

A. No.

CX 19

Q. "Reference to Field Operating Department."

A. We assume that this is a request for a general description of the Field Operating Department. This department, formerly officially designated Wholesale Field Operating Department, is now called Field Operating Control. It performs the function of prescribing and adminis-

tering procedures to be followed in executing the sales policies established by the sales departments. The Department has jurisdiction over all district offices, field sales accounting offices and five Car and Home warehouses.

CX 24

Q. "Date."

A. Shortly prior to February 27, 1951.

Q. "See 24-C reference to Phillipsburg meeting this week and display used there. Was this Phillipsburg, N. J.?"

361 A. It is not now known whether or not the reference is to Phillipsburg, N. J. In any event, the meeting referred to has no connection with Atlantic Refining Co. or with the Atlantic TBA program.

Q. "In what towns and cities, etc. were Dealer Meetings held?"

A. See response for CX 26.

Q. "Reference to Goodyear men."

A. We assume this is a request for identification of the Goodyear men referred to in the document. See Goodyear list of "Names Appearing on Documents."

Q. "Reference to Advertising Dept. Describe generally."

A. The advertising Department at Goodyear is headed by K. C. Zonsius, Director of Advertising, who reports to Mr. R. S. Wilson, Executive Vice President.

Under Mr. Zonsius are various managers and staff personnel divided generally according to product groupings.

The function of the Advertising Department is to determine promotion strategy in conjunction with the Sales Departments, to translate strategy into advertising, usually in conjunction with outside agencies, and either to supervise its publication by Goodyear in various media or to make it available to Goodyear's customers for their own use as they may desire.

CX 32

362 Q. "Review for identification of names."

A. Names are: W. E. Blank, Sales Manager, Replacement Sales, Auto-Lite Battery Corporation; L. A. Knight, of Auto-Lite; J. C. Thomas, Manager, Storage Battery and Brake Lining, Goodyear.

CX 34.

Q. "Reference to B-19 and B-19A forms (obtain)."

A. Copies of Form B-19 as used in 1951 cannot be found. Form B-19A was merely a gummed sticker with a number on it that was attached to the returned tire so as to identify the tire with the customer's claim.

Q. "Also reference to Service Department Policy. Describe generally."

A. Goodyear's Service Policy is based on its Lifetime Tire Guarantee:

"Every tire or tube of our manufacture bearing our name and serial number, is guaranteed to be free from defects in workmanship and material without limit as to time or mileage. If our examination shows such tire or tube has failed under the terms of this guarantee, we will either repair it or make a reasonable allowance on the purchase of a new tire or tube.

"This guarantee is made for the exclusive benefit of the owner actually using these products, is not assignable, and no claim hereunder will be recognized unless submitted on our standard claim form duly filled out and signed by such owner.

"There is no other warranty or liability, express or implied, applicable to these products. No representative has authority to make any representation, promise, or agreement except as stated herein."

With the exception of the second paragraph, which was added in 1952, this has been the form of guarantee in force since prior to March, 1951.

By referring claims for adjustment to Goodyear, tires may be adjusted under this guarantee by Goodyear dealers or stores, either by repairing them free of charge or making a reasonable allowance on a replacement. When a dealer presents to Goodyear a repair bill or a tire properly adjusted in accordance with Goodyear's policy, he is reimbursed for his expense of adjustment, plus a handling fee of 10% of the adjustment price. This applies to all Goodyear dealers, whether or not covered by a Sales Commission Plan.

CX 39.

Q. "Was document enclosed with CX 38."

A. No. It was presumably enclosed with CX 37.

CX 46.

Q. "What is Battery Merchandiser?"

A. A battery merchandiser is a battery display rack with a trickle charger so that batteries placed for display will be kept charging.

CX 56-57-58

Q. "56 refers to attached from Eddie Sauter. Obtain letter. Identify Republic."

A. Copy of letter is submitted herewith. Republic is identified in the letter. (CX 56-A)

CX 59

Q. "Identify signers."

A. Victor Holt, Jr. and W. D. Shilts for Goodyear, and J. G. Jordan, Shell Vice-President.

Q. "Was this the first contract with Shell?"

A. This is the first and only written contract with Shell.

CX 60

Q. "Do 8 and 12 totals refer to towns or stations?"

A. The answer to this appears in the document itself. With respect to the totals on CX 60-A, there is an omission or error in addition in the column containing the figure "8".

CX 61

Q. "Who were present at discussion?"

A. S. A. Gaylord, Goodyear-Petroleum Sales Department; R. G. Miller, Goodyear District Manager, Oklahoma City; J. A. Bailey, Goodyear Division Manager, Southwest Division; L. J. Wilmeth, Shamrock.

CX 65

Q. "Reference to Identification Department (G) describe."

365 A. See response for CX 17.

Q. "Also check names, 65-C-D. C. Roads, Fred La Boyteaux, Ed Bohmer, R. E. Sewell and J. L. Warren."

A. On the date in question these men held the following positions with Goodyear:

D. C. Roads—Staff, Sales Promotion—Advertising.

Fred La Boyteaux—Manager, Store Planning & Display Dept.

Ed Bohmer—Section Head, Sales Accounting Dept.

R. E. Sewell—Petroleum Representative, N. Y.

J. L. Warren—Staff, Petroleum Sales Dept.

CX 66

Q. "Check statistics—are more recent available?"

A. This document was not prepared by Goodyear. However, the figures on CX 66-F reflect the estimate of Mr. Thorp, Goodyear's Western Division Manager and an experienced man in the TBA business. They were not based on officially published figures. Goodyear does have available corresponding figures for subsequent years.

CX 64

Q. "Check Identification."

A. Signed by Victor Holt, Jr. and W. D. Shilts for Goodyear, and J. R. McWilliams, Vice-President of Carter.

CX 67

Q. "Check Identification."

A. There are no signatures.

366 CX 68

Q. "Check Identification."

A. Signed by J. E. Mayl and W. M. Mettler for Good-year, and John R. Sherwood, Vice-President of Sherwood.

CX 69

Q. "Check Identification."

A. Signed by R. S. Wilson and W. M. Mettler for Good-year, and J. E. Dyer for Sinclair.

CX 70

Q. "Check Identification."

A. Signed by J. E. Mayl and W. M. Mettler for Good-year, and Ernest L. Hughes for Sinclair.

CX 71

Q. "Check Identification."

A. Signed by Victor Holt, Jr. and W. M. Mettler for Goodyear, and T. E. Fitzgerald, Vice-President of Mid-Continent.

CX 73

Q. "Identify names."

A. Names appearing on the document and not identified are as follows:

J. C. Arnold—Manager, South-Central Division (Good-year)

S. A. Gaylord—Manager, Petroleum Sales Dept. (Goodyear)

R. G. Miller—District Manager, Oklahoma City (Good-year)

C. R. Mitchell—Petroleum Representative (Goodyear)
S. B. Caldwell—Mid-Continent, Southern Division
Manager.

367 Bill Harris—Mid-Continent, Southern Division, TBA
Manager

Q. "(Identify) also references to D-X dealers, 'A' bracket, etc."

A. "D-X" is the ^{trade} name of Mid-Continent petroleum products. "A" bracket refers to the billing level of a dealer annually purchasing \$15,000 or more of Goodyear merchandise.

Q. "Reference to 'Dual Program' Explain."

A. This refers to the fact that Mid-Continent had a TBA program with Firestone in addition to its program with Goodyear.

CX 74

Q. "Identify signatures."

A. Signed by Victor Holt, Jr. and W. M. Mettler for Goodyear, and M. H. Robineau, President of Frontier.

CX 75

Q. "Identify C. W. Thorp."

A. Goodyear's Division Manager, Los Angeles.

Q. "Reference to Petroleum Sales Dept. Describe generally."

A. The Petroleum Sales Department is concerned with the selling of Goodyear TBA by the outlets of petroleum companies which are both refiners and marketers of petroleum products. This department promotes selling ideas, policies and programs, and coordinates these with the activities of petroleum company sales personnel.

CX 77

Q. "Identify signatures."

368 A. Signed by Victor Holt, Jr. and W. M. Mettler

for Goodyear, and W. R. Reitz, President of Quaker State.

CX 78

Q. "Check date, author."

A. Author—J. W. Basista, Goodyear Petroleum Sales Department. Date—Late Spring, 1952.

Q. "Refers to Sales Research Department. Describe generally."

A. This department is now called the Business Research Dept. It obtains, analyzes and presents company, industry and business information of special interest to officers of the company and to the various division and department managers.

CX 159

Q. "Identify Mr. Fritsch."

A. Paul R. Fritsch—Staff, Identification Division (Goodyear), now Manager of this Division.

CX 160

Q. "Identify J. O'Neill."

A. Goodyear's Division Petroleum Representative, Philadelphia, Pa., now Assistant District Manager, Philadelphia.

CX 177

Q. "Who is Jennings Bros.? Explain."

A. According to the document, this was an independent wholesaler in Cranston, Rhode Island. Mr. Gaylord did not know if this Atlantic account was to be classified as an oil company supplying dealer, in which case Atlantic would get a 10% commission on Car & Home merchandise, or whether it qualified as a jobber, in which case Atlantic would get a 7½% commission. Either way, it made no difference to Jennings.

370 Names Appearing On Documents 10-29-56.

Names	Positions
Howard E. Ammerman	1-1-34 Manager Service Department 8-1-56 Special Assignments
Howard F. Aul	3-1-50 Philadelphia, Pennsylvania Service Representative 1-1-56 Philadelphia, Pennsylvania Manager District Service Department
Louis A. Barnes	4-1-50 Assistant Manager, Wholesale Field Operations 10-1-54 Manager, Wholesale Operating 1-1-56 Manager, Wholesale Operating
Joseph W. Basista	6-1-50 Senior Staff Petroleum Sales Department 11-1-56 Assistant Manager Petroleum Sales
David T. Buchanan	1-1-40 Staffman Advertising 1-1-56 Manager, Advertising and Sales Promotion
Wilford E. Cameron, Sr.	7-1-39 Staff Man Petroleum Sales Retired—10-1-51
Paul Castleberry, Jr.	1-23-50 Newark, New Jersey District Oper. Manager 10-1-50 Birmingham, Alabama Credit and Collection Clerk 10-16-50 GS Birmingham, Alabama Assistant Store Manager— Operating
Russel S. Colton	4-6-50 Albany, New York District Service Representative 7-28-52 Albany, New York Headquarters Burlington, Vermont Field Representative #2 Exited 4-30-55
Henry F. Cook	7-31-46 Senior Staff 1-1-56 Advt. Manager—Tire Depts.
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William W. Evans	3-1-49 Syracuse, N. Y. Service Repres. 1-2-52 Syracuse, New York Head- quarters Auburn, New York Field Repres. Exited 7-15-53
Paul R. Fritsch	1-1-40 Staff Man—Identification 1-1-56 Manager—Identification Div.
Samuel A. Gaylord	1-1-34 Manager Petroleum Sales 11-1-56 Special Assignments
Henry G. Harper, Jr.	4-1-45 Manager Associated Mdse. 11-1-51 New Toronto, Canada—Vice President in charge sales

Names	Positions
Louis R. Harrah	2-16-45 Staff Man Deceased—8-17-50
Victor Holt, Jr.	5-1-44 • Manager Tire Department 12-1-49 Vice President Chg. Tire Sales Div. 4-2-56 Vice President
Charles F. Knight	4-1-50 New York, New York Assistant District Manager 6-1-52 Buffalo, New York District Manager 11-1-54 Cleveland, Ohio District Manager 1-1-56 Cleveland, Ohio Assistant Div. Manager Retail Head- quarters, Chicago, Illinois 8-16-56 Cleveland, Ohio Assistant Division Manager Retail
John A. Lewin	6-1-44 Manager—Dealer Division Present Manager—Dealer Division
Isaac D. Love	6-1-49 Newark, New Jersey. District Manager
Fred W. McConky, Jr.	12-15-44 New York, New York Manager N. E. Divn. 12-1-52 New York, New York Manager N. E. Divn. Assistant Vice President
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Joseph E. Mayl	6-1-44 Vice President Sales Manager Tire Sales Div. 12-1-49 Vice President & Sales Coordinator 6-27-52 Vice President & General Manager Films—Foam & Flooring Div.
William M. Mettler	1-1-34 Assistant Secretary Deceased—6-7-55
Clair L. Metzger	6-15-48 Assistant Manager Trade Relations 11-1-51 Manager Associated Merchandise.
Jay T. Miller	10-21-36 Boston Chg. Service Dept. 7-1-51 Boston, Massachusetts Service Representative 1-1-56 Boston, Massachusetts Manager Dist. Service Dept.
Joseph W. O'Neill	1-1-47 Philadelphia, Pennsylvania Field Representative 3-1-51 Philadelphia, Pennsylvania Div. Petroleum Representative 11-1-54 Philadelphia, Pennsylvania Assistant District Manager

Names		Positions
Clarence C. Osmun	5-1-44 12-1-52 Retired—2-29-56	Manager Trade Relations Sales Managers Office
William O. Reid	7-7-47 1-1-56	Hartford, Connecticut Dist. Service Repres. Hartford, Connecticut Mgr. Dist. Service Dept.
Charles E. Ross	12-1-47 3-16-54 10-16-54	Manager Retread & Repair Matls. Sales Manager Retread & Repair Matls. Sales Senior Staffman Comm. Sales
Harry J. Ryan	11-1-46	New York, New York District Manager
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Edward C. Sauter	12-1-50 5-1-54	Pittsburgh, Pennsylvania District Manager Manager Cycle Tire Sales
John W. Silk	8-16-50 10-1-51 11-1-51 6-1-52 Exited—6-30-52	Buffalo, New York Service Representative New York, New York Petroleum Repres. Tr. New York, New York Field Representative #1 New York, New York Field Representative #2
Joseph C. Thomas	1-1-50	Manager Storage & Brake Lining
George L. Wright	5-1-49 Exited—4-15-51	Manager Wholesale Field Oper. Department
Kenneth C. Zonsius, Sr.	9-1-36 1-1-52 1-1-56	Manager—Auto Tire Div.— Tire Department Director of Advertising Director of Advertising

374 Mr. Dias: Mr. Examiner I would like to have the following documents identified for the record:

As Commission's Exhibit 23-C, "Goodyear merchandiser, January-February, 1950," (12 pages). The related Commission's Exhibit is Number 23-A and B.

As Commission's Exhibits 23-D, 23-D-1, and 23-D-2, "Goodyear merchandiser, March 1950" (12 pages), and inclosed flyer entitled "Goodyear New Farm Tire Demon-

strator" (2 pages), and Business Reply Post Card identified as "MDSR-March, 1950." The related Commission's Exhibit is Number 23-A and B.

As Commission's Exhibits 23-E and 23-E-1, "Goodyear Merchandiser, April, 1950" (8 pages), and inclosed flyer headed "First Peak Promotion in '50 Breaks April 19-29" (2 pages). The related Commission's Exhibit is Number 23-A and B.

As Commission's Exhibit 23-F, "Goodyear Merchandiser, May 1950" (8 pages). The related Commission's Exhibit is Number 23-A and B.

As Commission's Exhibits 23-G, 23-G-1, and 23-G-2, "Goodyear Merchandiser, June, 1950" (12 pages), and inclosed flyer entitled "Special July 4th Offer" (2 pages), and Business Reply Post Card relating thereto. The related Commission's Exhibit is Number 23-A and B.

As Commission's Exhibit 23-H, "Goodyear Merchandiser, July, 1950" (12 pages). The related Commission's Exhibit is Number 23-A and B.

375 As Commission's Exhibits 23-I and 23-I-1, "Goodyear Merchandiser, August 1950" (12 pages), and enclosed Business Reply Post Card identified as "MDSR-August 1950." The related Commission's Exhibit is Number 23-A and B.

As Commission's Exhibit 23-J, "Goodyear Merchandiser, September 1950" (8 pages). The related Commission's Exhibit is Number 23-A and B.

As Commission's Exhibit 23-K, "Goodyear Merchandiser, October 1950" (8 pages). The related Commission's Exhibit is Number 23-A and B.

As Commission's Exhibit 23-L, "Goodyear Merchandiser, November-December 1950" (8 pages). The related Commission's Exhibit is Number 23A and B.

As Commission's Exhibit 23-M, Cover and Index Page of Goodyear Book entitled "1950 Advertising, Dealer Ad-

vertising and Sales Promotion" (2 pages). The related Commission's Exhibit is Number 23-A and B.

As Commission's Exhibit 51-A, Goodyear Form A-98101L (current) entitled "Request for Identification Field Service." The related Commission's Exhibit is Number 51.

As Commission's Exhibit 56-A, Goodyear Inter-Company letter dated 8-2-51 from E. C. Sauter, District Manager (Pittsburgh, Pennsylvania) to F. W. McConky, Jr., Manager, Northeast Division, New York, New York.

The related Commission's Exhibit is Number 56.

376 Hearing Examiner Kolb: The exhibits may be marked as requested.

(Whereupon, the documents referred to were marked Commission's Exhibits 23-C, 23-D, 23-D-1, 23-D-2, 23-E, 23-E-1, 23-F, 23-G, 23-G-1, 23-G-2, 23-H, 23-I, 23-I-1, 23-J, 23-K, 23-L, 23-M, 51-A, and 56-A for identification.)

Mr. Dias: I offer the above-described documents in evidence.

Hearing Examiner Kolb: Are there any objections?

Mr. Mason: We have no objections to the documents offered.)

Mr. Ballard: I would like to note for the record that my former objection to Commission's Exhibit 56 will extend to 56-A.

Hearing Examiner Kolb: There being no objection, the following documents will be received in evidence: Commission's Exhibits 23-C, 23-D, 23-D-1, 23-D-2, 23-E, 23-E-1, 23-F, 23-G, 23-G-1, 23-G-2, 23-H, 23-I, 23-I-1, 23-J, 23-K, 23-L, 23-M, and 51-A. Commission's Exhibit 56-A will be received in evidence as to Goodyear, subject to a motion to strike by Atlantic.

(Whereupon, COMMISSION'S EXHIBITS 23-C, 23-D, 23-D-1, 23-D-2, 23-E, 23-E-1, 23-F, 23-G, 23-G-1, 23-G-2, 23-H, 23-I, 23-I-1, 23-J, 23-K, 23-L, 23-M, 51-A, and 56-A were received in evidence.)

377 Hearing Examiner Kolb: We will take a five-minute recess.

(A recess was taken.)

378 Mr. Dias: Mr. Examiner, I would like to have the following documents marked for identification:

As Commission Exhibit 248-A, a map of area comprising the ARCo Philadelphia — Suburban District.

As Commission Exhibit 249, Map of area comprising the ARCo Wilmington, Delaware, and Baltimore, Maryland Districts.

As Commission Exhibit 250, letter dated November 2, 1955, from M. G. Davis, ARCo, Manager of Marketing, Eastern Pennsylvania Region, to Mr. Norris A. Stein, Lancaster & Ford Avenues, Wilmington, Delaware.

As Commission Exhibit 251, letter dated February 7, 1956, from M. G. Davis, ARCo, Manager of Marketing, Eastern Pennsylvania Region, to Mr. Alfred H. Trivits, East Side Route #13 & Oak Lane, Laurel, Delaware.

As Commission Exhibit 252, letter dated December 21, 1956, from M. G. Davis, ARCo, Manager of Marketing, Eastern Pennsylvania Region, to Mr. William A. White, Sr., 205-09 French Street, Wilmington, Delaware.

As Commission Exhibit 253, letter dated May 2, 1955, from H. M. Hathaway, District Manager, ARCo (Baltimore) to Messrs. Abraham Berman and Morton Shor, Atlantic Service Station, Reisterstown Road and Fordleigh Lane, Baltimore, Maryland.

As Commission Exhibit 254-A, letter dated December 8, 1953, from J. C. Burns, District Manager, ARCo (Baltimore), with notation attached, to Mr. Michael J. Clifford, Park Heights and Garrison Avenues, Baltimore,
379 Maryland.

As Commission Exhibit 254-B, letter dated January 4, 1954, from M. G. Davis, Manager of Marketing, Southern Region, ARCo (Termination Notice) to Mr. Mi-

chael J. Clifford, Park Heights and Garrison Avenues, Baltimore, Maryland.

As Commission Exhibit 255, letter dated October 13, 1954, from A. R. Sanborn, District Manager, Philadelphia-Suburban District, ARCo to Mr. G. B. Gasen-Niebling, Carlisle Street and Hunting Park Avenue, Philadelphia, Pennsylvania.

As Commission Exhibit 256-A, letter dated September 20, 1954, from Leslie Geer, ARCo, to Mr. Albert J. Hoffman, 1502 Tonnelle Avenue, North Bergen, New Jersey.

As Commission Exhibit 256-B, letter dated September 30, 1954, from Stanley W. Bradley, Esq., Bradley and Huck, 7 Hillside Avenue, Tenafly, New Jersey, to ARCo, Newark 5, New Jersey, Attention: Mr. Leslie Geer.

As Commission Exhibit 256-C, document entitled: "Mutual Consent of Cancellation," between Mr. Albert J. Hoffman, North Bergen, New Jersey, and ARCo, dated November 15, 1954.

As Commission Exhibit 257-A, letter dated November 12, 1953, from "PNJ:EMcC", ARCo, to Mr. Aniello L. Iacona, Providence Road and South Avenue, Secane, Pennsylvania.

As Commission Exhibit 257-B, letter dated November 19, 1953, from Francis J. Catania, Esq., Catania & Gorbey, 106 East Fifth Street, Chester Del. Co. Penna., to ARCo, Philadelphia 1, Pennsylvania, Attention: A. R. Sanborn.

As Commission Exhibit 257-C, letter from Legal Department, ARCo, dated November 25, 1953, to Francis J. Catania, Esq., 106 East Fifth Street, Chester, Pennsylvania, with cc to Bartley T. Garvey, Esq., Federal Trade Commission, Washington 25, D. C.

As Commission Exhibit 258-A, letter dated May 22, 1956, from Leslie Geer, ARCo, to Mr. Thomas J. Policastro, Hudson Boulevard and 88th Street, North Bergen, New Jersey.

As Commission Exhibit 258-B, letter dated June 4, 1956, from Leslie Geer, ARCo, to Mr. Thomas J. Policastro, Hudson Boulevard and 88th Street, North Bergen, New Jersey.

As Commission Exhibit 259, letter dated July 5, 1956, from "LEC:MEM," District Manager, ARCo, to Mr. A. Bennett, Pawtucket and Ferris, Rumford 16, Rhode Island.

As Commission Exhibit 260, letter dated July 13, 1956, from "LEC:MEM," District Manager, ARCo, to Mr. R. L. Bisson, 469 Benefit Street, Pawtucket, Rhode Island.

As Commission Exhibit 261, letter dated October 21, 1955, from ARCo, By:—District Manager ("LEC/mw"), to Mr. Charles Davis, West Shore Road and Carpenter Street, Warwick, Rhode Island.

As Commission Exhibit 262, letter dated April 1st, 1954, from ARCo, W. F. van Haagen, District Sales Manager, to Mr. Herman DeFelice, c/o Herm's Atlantic Serv. Sta., Willow & Nicoll Streets, New Haven, Connecticut.

381 As Commission Exhibit 263, letter dated February 21, 1956, from ARCo, District Manager "LEC:MEM", to Mr. Leo F. DiMaio, 392 Broadway & Courtland Street, Providence, Rhode Island.

As Commission Exhibit 264, letter dated January 12, 1956, from ARCo, District Manager ("LEC:MEM"), to Mr. Howard F. Hambly, Atlantic Super Service, 205 Meeting Street, Providence, Rhode Island.

As Commission Exhibit 265, letter dated April 1st, 1954, from ARCo, W. F. van Haagen, District Sales Manager, to Mr. Lawrence E. Noel, c/o Larry's Atlantic Serv. Sta., Watertown, and Bunker Hill Avenues, Waterbury, Connecticut.

As Commission Exhibit 266, letter dated July 27, 1956, from ARCo, R. P. Eldridge, to Mr. J. D. Onelette, Main and Bancroft Streets, Springfield, Massachusetts.

As Commission Exhibit 267, letter dated February 21,

1956, from ARCo, District Manager ("LEC:MEM"), to Mr. Joseph S. Smith, Hartford Avenue and Killingly Street, Providence, Rhode Island.

As Commission Exhibit 268-A, letter dated November 5, 1954, from ARCo, Regional Manager of Marketing ("jap"), to Mr. Joseph D. Greco, Culver Parkway and Shelford Road, Irondequoit, New York.

As Commission Exhibit 268-B, letter dated November 10, 1954, from Joseph D. Greco, Culver Parkway and Shelford Road, Rochester, New York, to ARCo, Syracuse 1, New York, Attention: G. V. Ostrander.

As Commission Exhibit 269, letter dated January 3, 1955, from ARCo, W. J. McCambridge, Jr., District Manager, to Mr. Duane Olthof, Atlantic Service Station, 502 Broadway, Elmira, New York.

As Commission Exhibit 270-A, letter dated January 11, 1955, from G. V. Ostrander, Manager of Marketing, ARCo, to Mr. Walter F. Pawlowski and Mr. Matthew W. Kowalski, d/b/a Walt & Matt's Service, Bailey Avenue and Genesee Street, Buffalo, New York.

As Commission Exhibit 270-B, letter dated November 19, 1954, from John S. Wall, Acting Manager of Marketing, ARCo, to Mr. Walter F. Pawlowski and Mr. Matthew W. Kowalski, d/b/a Walt & Matt's Service, Bailey Avenue and Genesee Street, Buffalo, New York.

As Commission Exhibit 271, letter dated June 30, 1954, from J. S. Wall, Acting Manager of Marketing, ARCo, to Mr. Kenneth S. Shaw, 92-98 Broadway, Saranac Lake, New York.

As Commission Exhibit 272, letter dated August 30, 1954, from G. V. Ostrander, Manager of Marketing, ARCo, to Mr. Joseph A. Stocco, 230 Elizabeth Street, Utica, New York.

As Commission Exhibit 248-B, a map of area comprising

the ARCo Philadelphia Metropolitan and Suburban District.

383 Hearing Examiner Kolb: The exhibits may be marked as requested.

(The documents referred to were marked Commission's Exhibits 248-A and B, 249, 250, 251, 252, 253, 254-A and B, 255, 256-A, B, and C, 257-A, B, and C, 258-A and B, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268-A and B, 269, 270-A and B, 271, and 272, for identification.)

Mr. Dias: I offer the above described documents in evidence.

Hearing Examiner Kolb: Is there objection?

Mr. Mason: As to 248-A and B, and 249, we have no objection.

Hearing Examiner Kolb: Do you have any objection, Mr. Ballard?

Mr. Ballard: No, sir.

Hearing Examiner Kolb: There being no objection, the documents will be received in evidence as Commission Exhibits 248-A and B, and 249.

(The documents referred to, heretofore marked COMMISSION EXHIBITS 248-A and B, and 249 for identification, were received in evidence.)

Mr. Ballard: No objection to Exhibit 250.

Hearing Examiner Kolb: Mr. Mason?

Mr. Mason: As to offered Exhibit 250, we object on two grounds. One, that it is correspondence between 384 the Atlantic Refining Company and a stranger to this lawsuit, a document of which Goodyear has no notice.

Furthermore, it deals with a service station in an area as to which there is no sales commission arrangement in effect between Goodyear and Atlantic.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 250 as to Atlantic, and subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 250 for identification, was received in evidence.)

Mr. Mason: As to Commission Exhibit 251, we have the same objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 251 as to Atlantic, and subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 251 for identification, was received in evidence.)

Mr. Mason: As to Commission Exhibit 252, we have the same objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 252 as to Atlantic, and subject to a motion to strike by Goodyear.

385 (The document referred to, heretofore marked COMMISSION'S EXHIBIT 252 for identification, was received in evidence.)

Mr. Mason: As to 253, we have the same objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 253, subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 253 for identification, was received in evidence.)

Mr. Mason: As to 254-A, we have the same objection.

Hearing Examiner Kolb: The document will be received in evidence as to Atlantic, subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 254-A for identification, was received in evidence.)

Mr. Mason: As to 254-B, we have the same objection.

Hearing Examiner Kolb: The document will be received

in evidence as Commission Exhibit 254-B as to Atlantic, subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 254-B for identification, was received in evidence.)

Mr. Mason: As to offered exhibits 255 through 272, 386 we have only the single objection that these are letters between the Atlantic Refining Company and strangers to the proceeding as to which Goodyear had no notice.

Hearing Examiner Kolb: The following exhibits will be received in evidence: 255; 256-A to C, 257-A to C, 258-A and B, 259 through 267, 268-A and B, 269, 270-A and B, 271, and 272, as to Atlantic, subject to a motion to strike by Goodyear.

(The documents referred to, heretofore marked COMMISSION'S EXHIBITS 255, 256-A to C, 257-A to C, 258-A and B, 259 through 267, 268-A and B, 269, 270-A and B, 271 and 272 for identification, were received in evidence.)

387 Hearing Examiner Kolb: The following data supplied by the Atlantic Refining Company concerning the three market areas designated by Counsel in support of the Complaint, namely, Philadelphia Suburban District; Wilmington, Delaware district; and Baltimore, Maryland district, will be received in evidence, with notation of the fact that portions of this data apply only to Goodyear, and portions apply only to Firestone.

The stipulation is as follows:

Data submitted by Atlantic Refining Company concerning the three marketing areas designated by the Federal Trade Commission in The Matter of The Goodyear Tire & Rubber Company, The Atlantic Refining Company, Corporations, Docket No. 6486. Dated: May 29, 1957.

Philadelphia-Suburban District.

1. Area comprising the Philadelphia-Suburban District:
See map attached (CX 248-A).

2. Names of Atlantic and Goodyear personnel concerned
with TBA in the Philadelphia-Suburban District:

(a) Names of Atlantic personnel:

J. O. Estlow—Region Manager—Philadelphia-New
Jersey Region.

A. R. Sanborn—Region Sales Group Manager,
Philadelphia-New Jersey Region.

F. H. Romer—Region Direct Marketing Manager,
New Jersey Region.

388 W. J. Jackson—Region T. B. A. Coordinator, New
Jersey Region.

E. D. Smyth—District Manager, Philadelphia-
Suburban District.

C. H. Pence—Philadelphia—Suburban District
Dealer Sales Manager.

G. A. Arnholt—Philadelphia—Suburban District
Sales Supervisor.

W. Handy—Philadelphia—Suburban District Sales
Supervisor.

E. McConaghy—Philadelphia—Suburban District
Sales Supervisor.

Promotable Dealer Salesmen:

John Mantini
R. C. Dunham
Daniel Reynolds
Jack Diamond
Edward O'Driscoll
J. Kearns
Thomas Hayes

Jack Hoffman
S. Petrisson
Joseph Snyder
James Gallagher
William Keen
Joseph Muldoon

*Transcript of Proceedings.***General Salesmen:**

W. H. Weaver
N. B. Ludwig
George Gill

Philip Hopely
E. L. McKenna
George Headly

Service Salesmen:

Matthew Murray
Don Keyser
Charles Rowland
John McKernan
J. McIvor
M. Petrillo

F. Jones, Jr.
B. McWilliams
S. McLoughlin
R. C. Ringling
E. D. Barr

389 (b) Names of Goodyear personnel with whom Atlantic personnel of this District come in contact:

T. Butler Doolittle—District Manager

Luther Hutchinson—Assistant District Manager

A. H. Shafer—Regional Petroleum Representative

J. W. Fitzgerald—District Petroleum Representative

Fred Schaake—Truck Tire Representative

J. Burke—General Line Salesman

J. Cavanaugh—General Line Salesman

Stan Panza—General Line Salesman

C. McKeag—General Line Salesman

W. Whitaker—General Line Salesman

John Pease—General Line Salesman

John Curry—General Line Salesman

Gordon Harder—Store Manager

R. Weymouth—Store Manager

3. Names and addresses of Goodyear supply points serving dealers and distributors in the Philadelphia—Suburban District:

Goodyear Tire & Rubber Company, 2750 North Broad Street, Philadelphia, Pennsylvania.

@ Harvey W. George, 3301 Princeton Avenue, Philadelphia, Pennsylvania.

† F. C. Glenn, 8006 Germantown Avenue, Philadelphia, Pennsylvania.

* Frank Hagan, 54th and Chester Avenue, Philadelphia, Pennsylvania.

390 ** Elwood E. Kieser, 1527 Fairmount Avenue, Philadelphia, Pennsylvania.

† E. F. Miller, 809 Garrett Road, Upper Darby, Pennsylvania.

* Edward Parris, McDade Boulevard and Ashland Avenue, Glenolden, Pennsylvania.

Goodyear Tire & Rubber Company, 708 Summit Avenue, Jenkintown, Pennsylvania.

Goodyear Tire & Rubber Company, 310 Main Street, Norristown, Pennsylvania.

@ Former Atlantic contract dealer.

† Former Atlantic lessee dealer.

* Present Atlantic lessee dealer.

** Mr. Kieser conducts his TBA supply operations separately from his operations as an Atlantic lessee dealer and is classified by you as an independent Dealer Supply Point.

4. Data on the nominations of Atlantic outlets in the Philadelphia-Suburban District to Goodyear as of June 30, 1956:

Type of Atlantic Outlet	Total Number of Atlantic Outlets	Number Covered by Form G-1209†	Goodyear Classification‡	
			Dealers	Associate Dealers
(a) Lessee Dealers	226	174	2*	226*
(b) Contract Dealers	434	228	6‡	289‡
(c) Distributors	0	0		
(d) Customers of Distributors	0	0		

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* Two lessee dealers have chosen to be both a Goodyear Dealer and a Goodyear Associate Dealer, presumably because each classification offers some advantages not afforded by the other. Such dealers are included in both categories in these figures.

‡ Four contract dealers have chosen to be both a Goodyear Dealer and a Goodyear Associate Dealer, presumably because each classification offers some advantages not afforded by the other. Such dealers are included in both categories.

§ Information as to actual signing of franchise agreements is not available. It is believed that virtually all dealers covered by a G-1209 and a large majority of the customers of Atlantic supplying dealers sign at least an initial franchise.

† Indicates the number of dealers regarded as potential TBA purchasers on whose purchases, if any, a commission will be paid, and not the number to whom sales were made. Does not include 61 customers of Edward Parris and 54 customers of Frank Hagan, both of whom are Atlantic supplying dealers.

392 5. Total dollar sales of Goodyear TBA in the Philadelphia-Suburban District in 1955 on which Atlantic received a commission are shown below**. These sales figures are the actual prices paid by the Atlantic dealer, regardless of whether he is classified by Goodyear as a "Dealer" or "Associate Dealer".

	Supply Points	Lessee and Contract Dealers*		
		Tires	Batteries	Accessories
				Total
Goodyear District Office	2750 N. Broad St., Phila.	\$ 18,022	\$ 9,363	\$ 16,400
Harvey W. George	3301 Princeton Ave., Phila.	140,758	33,477	65,671
F. C. Glenn	8006 Germantown Ave., Phila.	159,764	48,549	92,410
E. F. Miller	809 Garrett Rd., Bywood	136,009	41,679	62,212
Frank Hagan†	54th & Chester Ave., Phila.	81,015	16,678	32,989
Ellwood E. Kleser	1527 Fairmount Ave., Phila.	251,752	56,315	112,721
Edward Parlist	McDade Blvd. & Ashland Ave., Glenolden	103,134	21,708	35,258
Goodyear Tire & Rubber Co.	708 Summit Ave., Jenkintown, Pa.	0	0	0
Goodyear Tire & Rubber Co.	310 Main St., Norristown, Pa.	0	0	0
*Total		\$890,454	\$227,769	\$417,721
				\$1,535,944

** Atlantic has no distributors in this district.

* A breakdown between lessee and contract dealers can be obtained only by a costly and time-consuming analysis of voluminous records.

† In the case of these Atlantic supplying dealers the sales figures are the prices paid by the supplying dealer and not by his customer.

- 393 6. Names and addresses of Atlantic distributors in the Philadelphia-Suburban District who are covered by a Form G-1209:

Atlantic has no distributors in this district.

7. Atlantic dealers in the Philadelphia-Suburban District who became dealers of Atlantic gasoline distributors.
Not applicable.

8. Current addresses of Atlantic Training Facilities in the Philadelphia-Suburban District:

Classrooms:

Germantown Jewish Community Center, Lincoln Drive and Emlen Street, Philadelphia, Pennsylvania.

Training Stations:

Joseph Barton, Ellet and McCallum Street, Philadelphia, Pennsylvania.

Charles Schock, Henry Avenue and Leverington Street, Philadelphia, Pennsylvania.

9. Names and then current business addresses of dealers and distributors in the Philadelphia-Suburban District whose relationships with Atlantic ceased in 1954 or 1955 under the circumstances indicated:

- (a) Leases or contracts cancelled during their terms are shown below. In all cases, formal termination was either by notice of cancellation from the dealer, by mutual cancellation by the dealer and Atlantic, or by death of the dealer.

394 (1) Lessee Dealers:

Leonard A. Anderson, Huntington Pike and Penn Street, Rockledge, Pennsylvania.

Harry Angelo, Island Road and Brewster Avenue, Philadelphia, Pennsylvania.

Joseph Arico, West Chester Pike and Marlboro Road, Stonehurst, Pennsylvania.

Edward F. Ausman, Montgomery Pike and Levering Mill Road, Cynwyd, Pennsylvania.

William Barton, Easton Road and Fair Oaks, Horscham, Pennsylvania.

Morris Bilson, 69th and Patterson Avenue, Upper Darby, Pennsylvania.

Morris Blum, Cheltenham Avenue and Pittman Road, Philadelphia, Pennsylvania.

W. G. Bond, Route #100, Uwchland, Pennsylvania.

Thomas Calvanesa, Chester Pike and Knowles Avenue, Glenolden, Pennsylvania.

Lynn Abbott Carden, Wycombe Avenue and Marshall Road, Lansdowne, Pennsylvania.

Bartholomew G. Casiello, Rising Sun Avenue, Front and Loudon Streets, Philadelphia, Pennsylvania.

John Chambers, Chester Pike and Clifton Avenue, Sharon Hill, Pennsylvania.

Arthur Chapis, West Chester Pike and Naylor's Run Road, Llanerch, Pennsylvania.

Albert Chase, Roosevelt Boulevard and Adams Avenue, Philadelphia, Pennsylvania.

William A. Crisman, 69th and Patterson Avenue, Upper Darby, Pennsylvania.

Arthur R. Cummins, DeKalb Pike and Ford Street, Bridgeport, Pennsylvania.

Ralph D'Ambrosio, West Chester Pike and Naylor's Run Road, Llanerch, Pennsylvania.

Alex DeCarlo, Long Lane and Alderbrook Road, Stonehurst, Pennsylvania.

Walter J. Donko, Durham and Hulmeville Roads, Midway, Pennsylvania.

Frank Eney, Jr., 262 Lincoln Highway, Fairless Hills, Pennsylvania.

William Eyer, Township Line Road and Church Road, Abington, Pennsylvania.

William R. Foster, 8759 Frankford Avenue, Philadelphia, Pennsylvania.

David J. Fowler, Marshall and Hampden Roads, Upper Darby, Pennsylvania.

Archibold W. Garvin, Jr., Bethlehem Park and Valley Green Road, Whitmarsh Township, Pennsylvania.

G. B. Gason-Niebling, Carlisle Street and Hunting Park Avenue, Philadelphia, Pennsylvania.

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Mario Germani, West Chester Pike and Naylor's Run Road, Llanerch, Pennsylvania.

Angelo Giordano, 22nd and Bainbridge Streets, Philadelphia, Pennsylvania.

Alfred Godino, Belmont Avenue opposite Jefferson Street, Lower Merion Township, Pennsylvania.

John P. Hanlon, Marshall and Hampden Roads, Upper Darby, Pennsylvania.

Thomas Hanna, Front and Coral Streets, Philadelphia, Pennsylvania.

George G. Hewitt, Chester Pike and Fairview Road, Leiperville, Pennsylvania.

George Hinds, Frankford and Briston Pike, Croydon, Pennsylvania.

Louis Huber, Southwest Corner York Road and Moreland Avenue, Hatboro, Pennsylvania.

T. A. Kennedy, Cottman Street and Roosevelt Boulevard, Philadelphia, Pennsylvania.

Howard M. Kinsey, Route No. 100, Uwchland, Pennsylvania.

Albert Kohler, 22nd and Edgemont Avenue, Chester, Pennsylvania.

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Samuel Levin, 5th and Bristol Streets, Philadelphia, Pennsylvania.

Angelo F. Lutz, 69th and Patterson Avenue, Upper Darby, Pennsylvania.

Angelo Lutz, Belmont Avenue opposite Jefferson Street, Lower Merion Township, Pennsylvania.

Thomas Major, Torresdale Avenue and Levick Street, Philadelphia, Pennsylvania.

Harold J. Maloney, Frankford and Tyson Street, Philadelphia, Pennsylvania.

Charles A. McCafferty, Baltimore Pike and Providence Road, Media, Pennsylvania.

John and Robert McClay, Aramingo, Frankford and Deveraux Streets, Philadelphia, Pennsylvania.

Charles McKeefrey, West Chester Pike and Kirklyn Avenue, Kirklyn, Pennsylvania.

John J. Medelka, Lansdowne and Stratford Avenue, Pennsylvania.

Harold Miller, Island Road and Brewster Avenue, Philadelphia, Pennsylvania.

Anthony J. Morengo, Frankford Avenue and Tyson Street, Philadelphia, Pennsylvania.

Ronald C. Morrison, Rt. No. 100, Uwchland, Pennsylvania.

John A. Murray, Wadsworth and Cheltenham Avenues, Philadelphia, Pennsylvania.

Svend Nielsen, 262 Lincoln Highway, Fairless Hills, Pennsylvania.

Herman J. Polsky, N. W. Corner Bustleton Avenue and Knorr Street, Philadelphia, Pennsylvania.

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Earl E. Rambo, Long Lane and Alderbrook Road, Stonehurst, Pennsylvania.

Thurman Riter, Garrett and Huntley Roads, Upper Darby, Pennsylvania.

Fred Rosató, 69th and Patterson Avenue, Upper Darby, Pennsylvania.

Donald T. Rothera, Roosevelt Boulevard and Cheltenham Avenue, Philadelphia, Pennsylvania.

Walter Runyon, N. S. Chester Park West of Hinkson Boulevard, Ridley Park, Pennsylvania.

Walter Runyon, Church Lane and Bailey Road, Yeadon, Pennsylvania.

Theodore Salvina, 10th, Ridge, and Callowhill Street, Philadelphia, Pennsylvania.

Boyd J. and Billy B. Sanderson, 262 Lincoln Highway, Fairless Hills, Pennsylvania.

Edward J. Santarlas, 28th Street and Passyunk Avenue, Philadelphia, Pennsylvania.

George Schofield, Ridge and Leverington Avenues, Philadelphia, Pennsylvania.

John Schtaba, Huntingdon Pike and Penn Street, Rockledge, Pennsylvania.

Donald Schurr, Montgomery Park and Levering Mill Road, Cynwyd, Pennsylvania.

399 Francis G. Shea, Marshall and Hampden Roads, Upper Darby, Pennsylvania.

Benjamin J. Skalski, Carlisle and Hunting Park Avenues, Philadelphia, Pennsylvania.

Sports Parking, Inc., 21st and Lehigh Avenue, Philadelphia, Pennsylvania.

Frank E. Stapleford, Jr., Easton and Bradfield Roads, Roslyn, Pennsylvania.

Louis Stein, Marshall Road and Owens Avenue, Lansdowne, Pennsylvania.

Frank Sweeney, Route 413 and Leamberis Avenue, West Bristol, Pennsylvania.

Paul Trapp, West Chester Pike and Naylor's Run Road, Llanerch, Pennsylvania.

Carl Unger, Route 413 near Newportville Road, Bristol, Pennsylvania.

Vernell L. VanAlstine, Naylor's Run Road, Llanerch, Pennsylvania.

Joseph Winnemore, Chester Pike and Knowles Avenue, Glenolden, Pennsylvania.

Alexander Zabielski, Bridge and Thompson Streets, Philadelphia, Pennsylvania.

(ii) Contract Dealers:

Alden Park Manor Garage, Cheltenham and Wissahickon Avenues, Philadelphia, Pennsylvania.

William Anderson, MacDade Boulevard and Wolfenden Street, Collingdale, Pennsylvania.

400 Bryner Chevrolet Company, 525 Township Line, Elkins Park, Pennsylvania.

James L. Burns, Jr., Main Street and Forrest Avenue, Jeffersonville, Pennsylvania.

Century Buick, Inc., S. E. Corner 18th and Jackson Streets, Philadelphia, Pennsylvania.

Cipressi Brothers, 6230 State Road, Philadelphia, Pennsylvania.

DeKalb Filling Station, Brown and DeKalb Streets, Norristown, Pennsylvania.

John DeNenno, Route 202, Dilworthtown, R. D. West Chester, Pennsylvania.

Dintenfoss & Cohen, S. E. Corner 11th and Race Streets, Philadelphia, Pennsylvania.

Fernwood Garage, 5934 Baltimore Avenue, Philadelphia, Pennsylvania.

Joseph Groner, Parkland, Pennsylvania.

Haddington Motor Service, 1654 North 57th Street, Philadelphia, Pennsylvania.

Henry S. Hoffman, Long Lane and Wildwood Avenue, East Lansdowne, Pennsylvania.

Godfrey J. Holmes, Haverford Road West of Wynnewood Road, Ardmore Park, Pennsylvania.

Juniata Auto Service, Erie Avenue and Bennington Street, Philadelphia, Pennsylvania.

401 Lehigh Service Garage, 2712 North 5th Street, Philadelphia, Pennsylvania.

George MacKissic, 150 South Main Street, Yardley, Pennsylvania.

Montgomery County Motors, Inc., Easton Road North of Maple Avenue, Horsham, Pennsylvania.

Moss Auto Repair, 860 North 40th Street, Philadelphia, Pennsylvania.

Newton Ford Company, Inc., Sycamore Street, Newton, Pennsylvania.

Norman's Service Station, Easton Road and Laurel Avenue, Horsham, Pennsylvania.

* William J. O'Driscoll, S. E. corner Crystal and Tioga Streets, Philadelphia, Pennsylvania.

Albert Paul, S. W. corner 6th Street and Columbia Avenue, Philadelphia, Pennsylvania.

George S. Raynes Garage, 2431 Gordon Street, Philadelphia, Pennsylvania.

Adam Secoda, Welsh Road and Roosevelt Boulevard, Philadelphia, Pennsylvania.

J. W. Stevens, 108 South Keswick Avenue, Glenside, Pennsylvania.

Vince and Ralph's Service Station, 6055 Hazel Avenue, Philadelphia, Pennsylvania.

402 Edward A. Wheaton, 63rd and Dicks Avenue, Philadelphia, Pennsylvania.

Lewis White, 2658-60 Island Road, Philadelphia, Pennsylvania.

Harry W. Wiley, 1532-67th Avenue, Philadelphia, Pennsylvania.

(iii) Distributors:

None.

- (b) Leases or contracts expired and were not renewed because of either the individual decision of Atlantic or the dealers, or the mutual decision of both:

(i) Lessee Dealers:

John Black, Huntingdon Turnpike and Bethayres Road, Bethayres, Pennsylvania.

James J. Bradley, West Chester Pike and Keystone Avenue, Upper Darby, Pennsylvania.

Aniello L. Iacono, Providence Road and South Avenue, Secane, Pennsylvania.

Howard Konkle, Wycombe Avenue and Marshall Road, Lansdowne, Pennsylvania.

Robert H. Mortimer, Torresdale Avenue and Levick Street, Philadelphia, Pennsylvania.

Arthur A. Mostardi, St. Lawrence Road and West Chester Pike, Highland Park, Pennsylvania.

403 Felix Piers, Lindbergh Boulevard and Wheeler Street, Philadelphia, Pennsylvania.

John P. Rafferty, Lindberg Boulevard and Wheeler Street, Philadelphia, Pennsylvania.

James E. Russell, N. W. corner 39th and Market Streets, Philadelphia, Pennsylvania.

Eugene A. Scott, Lancaster Pike and Wynnewood Road, Wynnewood, Pennsylvania.

Joseph K. Wilson, Baltimore Pike and Oak Lane Avenue, Clifton Heights, Pennsylvania.

(ii) Contract Dealers:

Anderson Tire Exchange, 613 Spring Garden Street, Philadelphia, Pennsylvania.

Cardona Brothers, 2635 West Passyunk Avenue, Philadelphia, Pennsylvania.

CarolSELLI's Service Station, Baltimore Pike and
Saxer Avenue, Springfield, Pennsylvania.

Clock Service Station, S. W. corner 30th Street
and Allegheny Avenue, Philadelphia, Penn-
sylvania.

H. W. Forth, DeKalb Pk., Bridgeport, Pennsyl-
vania.

Fred C. Powell, Bradford Avenue, West Chester,
Pennsylvania.

Michael Rose, 200 East Roosevelt Boulevard,
Philadelphia, Pennsylvania.

Tony's Auto Repair, 1125 South 13th Street, Phil-
adelphia, Pennsylvania.

404 (iii) Distributors:

None.

431 Mr. Dias: Mr. Examiner, I would like to have the
following documents marked for identification:

As Commission Exhibit 80-A through C, Goodyear Or-
ganization Charts—Sales Division, Tire Sales Depart-
ments, Associated Merchandise (January, 1950).

As Commission Exhibit 80-D through F, Goodyear Or-
ganization Charts—Sales Division, Tire Sales Depart-
ments, Associated Merchandise (January, 1951).

As Commission Exhibit 80-G through I, Goodyear Or-
ganization Charts—Sales Division, Tire Sales Depart-
ments, Associated Merchandise (1952).

As Commission Exhibit 80-J and K, Goodyear Organ-
ization Charts—Tire Sales Division, Tire Divisions—
(1953).

As Commission Exhibit 80-L and M, Goodyear Organiza-
Charts—Tire Sales Division, Tire Divisions—(1954).

As Commission Exhibit 80-N and O, Goodyear Organiza-

tion Charts—Tire Sales Division (Akron), Tire Division (1955).

As Commission Exhibit 80-P and Q, Goodyear Organization Charts—Tire Sales Division (Akron), Tire Division (1956).

As Commission Exhibit 59-F through I, Letter Agreement dated January 8, 1953, between Goodyear and Shell American Petroleum Company, Kokomo, Indiana, with Exhibit A attached (4 pages).

432 As Commission Exhibit 76-A, Letter dated December 9, 1954, from H. E. Armitage, Vice President, the Frontier Refining Co., Denver, Colorado, to Goodyear.

As Commission Exhibit 76-B, Letter dated January 28, 1955, from S. A. Gaylord, Manager, Petroleum Sales, Goodyear, to The Frontier Refining Company, 410 Boston Building, Denver 2, Colorado.

As Commission Exhibit 73-C, Letter dated May 16, 1955, from Goodyear to Mid-Continental Petroleum Corporation, Tulsa 2, Oklahoma, transmitting letter agreement of even date.

As Commission Exhibit 73-D through G, Letter Agreement dated May 16, 1955, between Goodyear and D-X Sunray Oil Company, Tulsa 2, Oklahoma (formerly Mid-Continent Petroleum Corporation) with Exhibit A attached (4 pages).

As Commission Exhibit 79-A through F, Letter Agreement dated January 26, 1955, between Goodyear and Anderson-Prichard Oil Corporation, Liberty Bank Building, Oklahoma City 2, Oklahoma, with Exhibits A, B (Form G-1209) and C (Form G-1204) attached (6 pages).

As Commission Exhibit 79-G, Letter (amendment) dated February 18, 1955, from Anderson-Prichard Oil Corporation, Liberty Bank Building, Oklahoma City 2, Oklahoma, to Goodyear.

As Commission Exhibit 247-A, Goodyear TBA Basic Inventory Guide—Form S 9903, 2-50 (16 pages).

433 As Commission Exhibit 79-H through J, Unexecuted letter contract dated August 9, 1949, between Goodyear and Ashland Oil and Refining Company, Ashland, Kentucky (3 pages).

As Commission Exhibit 79-K, Letter dated September 13, 1949, from Everett F. Wells, Vice President, Ashland Oil and Refining Company to Mr. Sam Gaylord, Goodyear.

As Commission Exhibit 79-L, Letter dated September 28, 1949, from Mr. S. A. Gaylord, Manager, Petroleum Sales Department, Goodyear, to Mr. E. F. Wells, Vice President, Ashland Oil and Refining Company, Ashland, Kentucky.

As Commission Exhibit 79-M, Letter dated July 12, 1950, from W. E. Cameron, Petroleum Sales Department, Goodyear to Mr. Don W. Detjen, Ashland Oil and Refining Company, Ashland, Kentucky, enclosing CX 79-N, O, 79 P-V and 79-W.

As Commission Exhibit 79-N and O, Goodyear Inter-Company letter dated March 24, 1950, from S. A. Gaylord, Manager, Petroleum Sales Department, to H. E. Hoerster, District Manager, Cincinnati, Ohio, with carbon copies to Messrs. J. E. Stone (Ashland) and W. E. Cameron, L. R. Harrah and L. H. Shepherd (Goodyear) with same letter sent to eight designated Goodyear Districts and copy to Buffalo District (Goodyear) in re: "Ashland Oil & Refining Company, Ashland, Kentucky."

As Commission Exhibit 79-P through V, Goodyear
434 document entitled "Special Account Instructions Ashland Oil & Refining Company, Inc., Ashland, Kentucky Sales Commission," dated 1-3-'50.

As Commission Exhibit 79-W, Goodyear document entitled "Goodyear Districts" (1 page).

(The documents referred to were marked Commission's

Exhibits 80-A through Q; 59-F through I; 76-A and B; 73-C through G; 79-A through G; 247-A; 79-H through W, for identification.)

Mr. Dias: I offer the above described documents in evidence.

Mr. Ballard: Atlantic has no objection to Commission Exhibit 80-A through Q.

Mr. Mason: Goodyear has no objection to any of those exhibits.

Hearing Examiner Kolb: The documents will be received in evidence as Commission Exhibit 80-A through Q.

(The documents heretofore marked for identification COMMISSION EXHIBIT 80-A through Q, was received in evidence.)

Mr. Ballard: With respect to Commission Exhibit 59-F through I, Commission Exhibit 76-A and B, 73-C through G, and 79-A through G, Atlantic objects because these documents appear to relate solely to Goodyear and other oil companies. ~~There is no showing that Atlantic was~~

~~other oil companies.~~ *struck* There is no showing that Atlantic 435 was a party to them or charged with notice of them.

Mr. Mason: As to these same Exhibits, Goodyear object to their introduction in evidence because they relate to transactions between Goodyear and non-respondents to oil companies, and so in Goodyear's view are not a proper subject of this proceeding.

Hearing Examiner Kolb: The objection as to Goodyear to Exhibit 59-F to I will be overruled. The document will be received in evidence as to Goodyear, subject to a motion to strike as to Atlantic.

(The document heretofore marked for identification COMMISSION EXHIBIT 59-F to I, was received in evidence.)

Hearing Examiner Kolb: As to Commission Exhibit 76-A, same ruling, as to Goodyear the objection is over-

ruled, and the document will be received in evidence as to Goodyear, subject to a motion to strike by Atlantic.

(The document heretofore marked for identification COMMISSION EXHIBIT 76-A, was received in evidence.)

Hearing Examiner Kolb: As to Commission Exhibit 76-B, the objection of Goodyear is overruled. The document will be received in evidence as to Goodyear, subject to a motion to strike by Atlantic.

(The document heretofore marked for identification 436 COMMISSION EXHIBIT 76-B, was received in evidence.)

Hearing Examiner Kolb: As to Commission Exhibit 73-C through G, the objection of Goodyear will be overruled. The documents will be received in evidence, subject to a motion to strike by Atlantic.

(The document heretofore marked for identification COMMISSION EXHIBIT 73-C through G, was received in evidence.)

Hearing Examiner Kolb: As to Commission Exhibit 79-A to G, the objection of Goodyear is overruled. The document will be received in evidence as to Goodyear, subject to a motion to strike by Atlantic.

(The document heretofore marked for identification COMMISSION EXHIBIT 79-A, to G, was received in evidence.)

Mr. Ballard: With respect to Commission Exhibit 247-A, Atlantic has no objection.

Mr. Mason: Goodyear has no objection to Commission Exhibit 247-A.

Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 247-A.

(The document heretofore marked for identification COMMISSION EXHIBIT 247-A, was received in evidence.)

Mr. Ballard: With respect to Commission Exhibit 437 79-H through W. Atlantic has the same objections for the same reasons as specified with respect to Commission Exhibit 59-F through I and subsequent documents.

Mr. Mason: As to Commission Exhibit 79-H through W, Goodyear has the objection that these documents relate to Goodyear's relations with non-respondent oil companies and so have no proper relevance to this proceeding.

Hearing Examiner Kolb: The objection of Goodyear to Commission's Exhibit 79-H through W for identification will be overruled. The documents will be received in evidence as Commission Exhibits 79-H through W as to Goodyear, subject to a motion to strike by Atlantic.

(The document heretofore marked for identification COMMISSION EXHIBIT 79-H through W, was received in evidence.)

440 Mr. Kelaher: Mr. Examiner, before we call our first witness, I would like to make a statement with respect to several documents in the record.

With respect to the documents in the record referred to or identified as Commissions' exhibits 255 to 272, inclusive, appearing on pages 379 through 383 of the record, it should be noted that they were all of the warning letters sent by Atlantic during the period June, 1950, through June, 1956, to which dealers in the three marketing regions in which the Goodyear TBA sales commission plan was in effect.

It should also be noted that warning letter was sent to Mr. Robert R. Esposito, Morris Avenue, Morrison Road, Springfield, New Jersey, but that the papers are unavailable because the file was inadvertently destroyed.

It should also be noted that the data requested in item

7 for the Wilmington, Delaware and Baltimore districts appearing at pages 410 and 424 respectively of the record was for the period April, 1950, through June 30, 1956.

I would like to call Mr. George Hill to the stand, please.

GEORGE J. HILL, JR., was thereupon called as a witness for the Commission, and having been duly sworn, testified as follows:

441 *Direct Examination by Mr. Kelaher.*

Q. Will you please state your name and home address?

A. George J. Hill, Jr., 112 Julianna Terrace, Collingdale.

Q. Are you here in response to a subpoena?

A. Yes, sir.

Mr. Kelaher: Will you hand your subpoena to the Examiner.

The Witness: (Hanging.)

By Mr. Kelaher:

Q. Mr. Hill, were you at one time an Atlantic leasee dealer?

A. Yes, sir.

Q. Will you please state the period during which you were an Atlantic leasee dealer?

A. August 1949 to December 1956.

Q. And please state the location of your station.

A. McDade, below Chestnut Street, in Darby, Pennsylvania.

Q. Now beginning in 1949, would you please state what TBA products you sold?

A. Lee of Conshohocken tires, Exide batteries, Fram filters, Dupont products, chemical products, and Thermoid fan belts, Thermoid hoses.

Q. From whom were such products purchased?

A. From Edward Parris.

Q. And where was Mr. Parris located?

A. At that time at Clifton Avenue on Chester Pike in Sharon Hill.

442 Q. And for how long a period did you carry the products you just named? Up until what time?

A. From the time I had started into the station.

Q. And did you then subsequently carry Goodyear TBA?

A. Yes, sir.

Q. When did you begin to carry Goodyear TBA?

A. I believe it was in March of 1951, but I am not definitely sure.

Q. And in or about that time, did you attend an Atlantic dealer meeting?

A. I did, sir.

Q. And where was the location of that meeting?

A. 69th Street, at a restaurant, I believe Kostik's.

Q. Who were present at that meeting?

A. I would say in the neighborhood of approximately 40 dealers, Goodyear representatives, and also Atlantic.

Q. Were those 40 dealers you referred to Atlantic dealers?

A. Yes, sir.

Q. And what transpired at that meeting?

A. We had a training film showing the various qualities of the Goodyear tire and sponsoring the program they were about to set up on Goodyear merchandise and batteries.

Q. At that time was it announced that Atlantic was to sponsor the Goodyear TBA line?

A. Yes, sir.

443 Q. And do you recall whether Atlantic representatives indicated that you were free to buy any other TBA of your choice?

Mr. Correa: I object to this leading and suggestive form of examination, if your Honor please, on a matter of this kind. I think we might have the witness' recollection unaided.

Hearing Examiner Kolb: I will sustain the objection to the form of the question.

By Mr. Kelaheer:

Q. Mr. Hill, what was the purpose of the meeting just referred to?

A. My impression was to get across the quality and construction of the Goodyear merchandise and to show how the program would actually work and be a better product, sell better.

Q. Did Atlantic at that time state that it was going to sponsor Goodyear TBA, if you know?

A. Yes, sir.

Q. After the meeting in question, Mr. Hill, what brand of TBA or what TBA line did you begin to carry?

A. Well, in the beginning I had a sufficient stock of Lee—in fact, I had about 75 to 80 tires and I didn't buy Goodyear tires right off the bat because I was concerned about what I had in stock.

Now in a few incidents we run into such as filters and such where as I run out of one, I replace it with the other, but it wasn't a mass change-over.

Q. When you say replace it with the other, what do you mean?

A. They carried AC and Purolator.

Q. By "they," who are you referring to?

A. Atlantic, but—

Q. Who did you begin to purchase—

Mr. Thompson: (Interposing) He didn't finish his answer.

Mr. Kelaher: Excuse me.

A. I would say Atlantic was—it was actually through Ed Parris, the same distributor that we had with Lee.

By Mr. Kelaher:

Q. Do I understand you to say that Mr. Parris then became the Goodyear TBA supplier?

A. Yes, sir, TBA distributor.

Q. Now, you stated that you continued to carry Lee tires. Were you satisfied with carrying Lee tires—

A. Up until that point I was happy with them because they had a road hazard guarantee and they were cheaper in price and we made a little more money on them.

Q. Did the Goodyear tire have a road hazard guarantee?

445 A. No, sir.

Q. Was the Goodyear tire price higher than the Lee price?

A. They were higher because you didn't quite get the discounts we got with Lee.

Q. I see. Now did you have any tire signs hanging in your station when you entered the premises in August of 1949?

A. I did.

Q. What type of signs did you have?

A. The outdoor, big sign, that was electrically lit up.

Q. Did you know of your own knowledge how long that sign had been at that particular station.

A. Well, I have been in that neighborhood since 1937 and it was there when I came in the neighborhood.

Q. After you changed—or rather, after March of 1951, was the Lee sign still on the premises, in March 1951?

A. In March 1951, I believe it was still on the premises.

446 Q. Were you advised by anyone that the Lee sign was to be taken down?

A. Yes, sir.

Q. Who advised you?

A. Lee of Conshohocken.

Q. And what did Lee of Conshohocken represent to you?

A. They told me they had word to take the sign down.

Q. State the substance of the conversation between you and the Lee of Conshohocken representative.

A. Larry Deemer from Lee, the Branch Manager, asked me if I wanted the sign taken down. They had word to have it removed.

Q. And did he indicate whom he had received the word from?

A. No.

Mr. Thompson: It doesn't matter what was indicated.

The Witness: (Continuing) And he asked me if I wanted to fight the issue and I said "no."

By Mr. Kelaheer:

Q. You said "no." What happened thereafter?

447 A. The sign was removed.

Q. And was it replaced by another type of sign?

A. Goodyear.

Q. And were you permitted thereafter, or did you thereafter advertise Lee tires?

Mr. Thompson: Which question are you asking?

Mr. Kelaheer: I will withdraw the first one.

By Mr. Kelaheer:

Q. Did you thereafter advertise Lee tires?

A. Nothing other than the tire stands.

Mr. Correa: I didn't hear that.

The Witness: Nothing other than the tire stands.

By Mr. Kelaher:

Q. Where were the tire stands located?

A. In front of the station with tires.

Q. Did you have thereafter any signs advertising—

A. (Interposing) Outside, no, sir.

Q. —(Continuing)—Lee tires.

Why didn't you advertise Lee tires thereafter?

A. Well, I had, as I say, a pretty heavy stock and I was trying to pair them off and I would have to buy tires in between to try to match them up in pairs to get rid of them. But I had no advertisement other than the tire stands when the change-over was made.

Q. Did you ever attempt to advertise Lee tires after that time?

448 A. No, sir.

Q. Why didn't you?

(After pause.)

Q. You may answer the question.

A. I really don't know. I mean, I just felt that I didn't want to buck the issue.

By Mr. Kelaher:

Q. After March 1951 was any other advertising placed on your premises with respect to TBA?

A. Decals in the top of the windows, with Goodyear on them. And of course the original Goodyear tire sign.

Q. So your station was identified as Goodyear TBA thereafter, is that correct?

A. That is right.

Q. Do you know approximately the value of the stock of Lee tires you had on hand in or about March, 1951?

A. Rough guess, about a thousand dollars, I would say.

Q. Thereafter, who was your primary supplier of TBA products?

A. Mr. Ed Parris.

Q. And what line did you purchase from him?

A. Goodyear batteries, tires, AC filter, and he still had Dupont products. We had Goodyear fan belts 449 in place of Thermoid and Goodyear hose in place of Thermoid.

Q. Did you have any Thermoid fan belts on hand when the change-over occurred?

A. Yes, sir, they were re-sleeved. In other words, they put the Goodyear numbers on them for us.

Q. They put the Goodyear brand name on them too?

A. Yes, and they re-sleeved them to the Goodyear numbers.

Q. Now did you pay for your advertising from Lee?

A. No.

Q. Did you pay for your advertising, the advertising furnished by Goodyear?

A. Yes.

Q. Did you do a credit card business, Mr. Hill?

A. Yes, sir.

Q. Incidentally, about what was your gallonage at your station?

A. 32,000 to 35,000.

Q. Were you one of the larger dealers in that area?

A. Maybe the largest in Darby.

Q. And approximately how much of your business was on credit, do you recall?

A. Well, I always felt proud to say about one hundred dollars a day.

Q. That would be approximately how much of your overall business, percentage-wise?

450 A. Twenty-five percent.

Q. During the period you were in the station, when you originally went into the station, what was the term of your lease?

A. One year. The original lease, I believe, was only six months and then I got a year.

Q. And were there rent increases during that period?

A. Definitely.

Q. How often did the rent increases occur?

A. Well, I would say once a year, on the average. That is, as the station progressed.

Q. Do you recall one occasion where your rent was raised to a minimum of \$100?

A. Yes, I do.

Q. Would you please state what happened at that time?

A. Well, in that particular case it was raised over \$100 as a minimum and I protested it and was quite put out about it, but it didn't do me a lot of good to protest it. I didn't get anywhere and when I was done, why, I signed a lease and forgot about it.

Q. Do you recall what that increase was from, what your prior rent was, before it hit \$100 minimum?

A. No I don't, sir.

Q. Do you recall when your last lease was entered into?

A. The end of 1954.

451 Q. And do you recall the circumstances surrounding the signing of it?

A. Well, I was handed a lease on the last day of the month in the afternoon and they told me I had to get it back in the mail by that night to make it legal.

Q. When?

A. Have the lease back in the mail by that night and I had very little time to look over the lease. It was on the last day of the month and I signed a three-year lease thinking it was a one-year lease, and didn't know it.

Q. How many hours, approximately, did you have to make up your mind?

A. Four and a half to five hours. I had to look it over

while work was still going on and it was a pretty busy afternoon.

Q. How many hours did you keep your station open from the time you entered into business?

A. Twenty-four hours a day.

Q. Was there ever a time when you desired to reduce the number of hours of station operation?

A. Well, in 1955 business started to drop on the last shift, I mean the business was doing just about as well, but the expenses had gone up, manpower, rent, overhead, light and heat, so the station for the next two years just stood at a standstill, financially, and I would operate that night shift at probably about a \$5.00 a day loss, by 452 my figures. So I would liked to have dropped that shift, but I couldn't get together and couldn't get permission to drop it.

Q. Permission from whom?

A. From the Atlantic representatives to drop it.

Q. Do you recall—

Mr. Thompson: (Interposing) I object to this line of questions and answer and ask they be stricken unless there is a specific identification of who in Atlantic talked to him and what was said. The testimony that Atlantic wouldn't give permission is just a conclusion of this witness, and meaningless on the record.

Mr. Kelaher: I intend to develop this further, your Honor.

Hearing Examiner Kolb: Objection overruled.

Mr. Correa: I should like to object to this entire line on behalf of the respondent Goodyear on the ground that all of this is res inter alios acta.

Hearing Examiner Kolb: Overruled.

By Mr. Kelaher:

Q. Mr. Hill, do you recall a conversation with Atlantic representatives in connection with the incident you are now referring to?

A. Well, I run into a problem on my night shift with manpower—

453 Mr. Correa: The question was "Do you recall."

I move the answer be stricken.

Hearing Examiner Kolb: Read the question.

(Question read.)

A. Yes.

By Mr. Kelaher:

Q. Would you please state the circumstances, the conversation, rather, and identify the other party.

A. Stephen Petrison, the Atlantic salesman.

Q. Now would you please state the conversation?

A. Well, I was telling him about my problems on the night shift, that I thought I would have to close the station at those hours, that I couldn't make them pay. He said, well, he thought that the company wouldn't go for a closing at night time and he thought if I had any ideas like that, that it would be best to give up the station, sooner than run into trouble, more or less leave the station if I thought I would have to close it. They thought that the station should be open.

Q. What happened after that?

A. Well, I didn't make up my mind at that time. That was around Labor Day, and I went on another month and a half before I actually decided to give up the station.

Q. When did you give up the station?

A. I signed a mutual cancellation in October of 1956.

454 Q. Mr. Hill, referring back to the meeting at Kostick's in or about March 1951, do you recall whether

Atlantic representatives stated that you had your choice of the brand of TBA you could carry?

A. I don't really remember, sir.

Q. And you stated that there were approximately 40 other dealers, Atlantic dealers, present at that meeting?

A. That is right.

Q. Now based on your own knowledge, do you know whether those other Atlantic dealers changed over to the Goodyear TBA line at the time you did?

A. I only know a few personally. I mean, I know a lot of them to see them, but I only knew maybe 10 or 12 personally. They changed, of course.

By Mr. Kelaher:

Q. At that time, Mr. Hill, did you have any reason for discontinuing the sale of Lee tires?

A. For discontinuing the sale?

455 Q. Yes, sir.

A. Yes. In order to purchase the tires, I had to purchase them from Bryn Mawr and in order to adjust the tires, I had to adjust at Bryn Mawr and we would lose an hour's time every time we had a—

Q. I am referring to the March 1951 meeting, up to that time you were—

A. (Interposing)—Satisfied with them.

Q. You were satisfied with Lee tires?

A. That's right.

Q. Mr. Hill, before the change-over to Goodyear, I believe you stated you were buying Lee tires from Mr. Parris, is that correct?

A. That is true.

Q. And would the adjustment be made—

A. (Interposing.) Be done by Mr. Parris.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Cross examination?

Mr. Thompson: Atlantic Refining has no questions, sir.

Mr. Correa: We have none, if your Honor please.

Hearing Examiner Kolb: That is all, Mr. Hill.

(Witness excused.)

Mr. Kelaher: Mr. Examiner, I would like to call Mr. Heller.

456 EDWARD C. HELLER was thereupon called as a witness for the Commission, and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address?

A. Edward C. Heller, 55th and Walnut, 5500 Walnut, Philadelphia, Pa.

Q. And the name of your company?

A. E. P. Rotzell Company.

Q. Will you describe your company's business, please?

A. Hard parts, accessories, service station, garage, car dealer equipment.

Q. How about—

Mr. Thompson: (Interposing.) May I have that answer read? I couldn't follow that.

Hearing Examiner Kolb: Read the answer please.

(Answer read.)

By Mr. Dias:

Q. Are you familiar with the term "TBA"?

A. Yes, sir.

Q. Do you know what that includes?

A. Yes, sir.

Q. Does your company handle tires?

A. No tires.

457 Q. How about batteries?

A. Yes, sir.

Q. Will you name the brand of batteries?

A. Delco.

Q. Have you always carried Delco batteries?

A. No, sir.

Q. How long have you carried them?

A. A little over a year.

Q. And prior to that time—

A. (Interposing.) Willard.

Q. How long did you carry Willard?

A. Prior to my coming with the company.

Q. How long was that?

A. Well, I came with the company seven years ago.

Q. Have you been a salesman with Rotzell for those 7 years?

A. That's right, sir.

Q. How about filters, what brand of filters?

A. Purolator.

Q. And have you carried those for the full seven years?

A. Yes, sir.

Q. How about belts and hoses?

A. Durkee-Atwood.

Q. Spark-plugs?

A. Champion.

Q. Chemicals?

458 A. The Dupont chemical line.

Q. What class customer does the Rotzell Company solicit?

A. Service stations, independent repair shops, garages, car dealers.

Q. What is the company's general trade area, do you know?

A. In what way?

Q. The company as a whole, the Rotzell Company, where do they sell?

A. All over the city of Philadelphia, Delaware County.

Q. Is that the entire trading area of the company?

A. Well, they do sell some over in Jersey, through the office, but that isn't in the salesmen's category.

Q. How many salesmen are employed?

A. Five.

Q. And how are they compensated, salary or commission?

A. Straight commission.

Q. Does Rotzell Company offer delivery service?

A. Yes, sir.

Q. How many trucks do they operate for that purpose?

A. Five.

Q. How many does the Rotzell Company—does the Rotzell Company have any branches?

A. Yes, sir. We have the main store and four branches.

Q. Can you give the addresses?

A. 18th and Christian—

459 Q. (Interposing.) Is that the main store?

A. No, the main store is 1627 Fairmont Avenue; the branch at 18th and Christian, one at 55th and Walnut, and one on Lancaster Pike in Ardmore and one 6118 Germantown Avenue.

460 Q. Now, what is your particular sales territory?

A. West Philadelphia and eastern Delaware County.

Q. And do you solicit service stations?

A. Yes, sir.

Q. Are there any Atlantic stations in your sales territory?

A. Yes, sir.

Q. Do you sell batteries or accessories to any of those Atlantic stations?

A. Very very little.

Q. Do you have any regular accounts among the Atlantic stations?

A. Yes.

Q. Can you state how many?

A. Probably four or five of them.

Q. Can you tell us how many stations, Atlantic stations, there are in your sales territory?

A. Probably around 30, 35.

Q. Have you called on the 35 or 40 from time to time?

A. I have.

Q. And can you give us some idea how often you called upon them?

A. Well, I may, if I start to call on a new customer, I may call on him five or six weeks, straight in a row, if I see nothing, then I drop it and maybe once every two weeks, if I still get no business, then I drop down to 461 a month and after that I forget about it.

Q. I see. And how many stations would you say you sell to, regularly, Atlantic stations?

A. Oh, in hard parts, such as king pins and bushings, mufflers, tail pipes, those items, I have four or five Atlantic customers that buy. But nothing in the TBA line.

Q. Now, on these Atlantic stations, that buy these hard parts, do you try to sell them batteries and accessories?

A. Yes, sir, I have.

Q. And how about the others, do you solicit their business for batteries and accessories?

A. Yes, sir.

Q. These stations, these Atlantic stations in your sales territory, do you recall the type, or do they carry TBA?

A. Yes, sir.

Q. And do you recall the brands that are advertised by the stations?

A. Goodyear tires, batteries.

Q. Is that true of all of them?

A. (Continuing.) Du Pont Chemicals.

Q. And is that true of all the stations, all the Atlantic Stations?

A. In my area, yes, sir.

Q. Have you ever called on a new Atlantic station? Have any new Atlantic stations opened in your sales territory.

462 A. Yes, sir.

Q. And have you called on those new stations?

A. Yes, sir, I have.

Q. How soon after they opened?

A. Oh, I try to watch and call within the week.

Q. And have you ever sold anything to those stations?

A. Some jacks, equipment that he may need, tire tools, or jacks that he may need for the driveway service.

Q. Have you sold them batteries or accessories?

A. No, sir.

Q. Have you called on new operators of old stations?

A. Yes, sir.

Q. And what has been your experience with those?

A. Practically the same.

Q. Now, on those new stations that opened up, did they have TBA supplies?

A. Yes, sir.

Q. Do you recall the brand they had?

A. Goodyear tires and batteries.

Q. And did the new operators of old stations have TBA on their premises?

A. That is right.

Q. And what was it?

A. Same brands.

Q. Do you recall any Atlantic stations that purchased your TBA line at any time and then subsequently discontinued?

A. Well, a year or so ago we had the Du Pont Chemicals representative with us and we were the first ones to have him in the city of Philadelphia. I sold a couple of the Atlantic dealers, fellows I had known, and I ran into an Atlantic salesman later on, and after that, I had no more sales of the Du Pont Chemicals. As one dealer told me, that he was to save it for the Atlantic salesman the next time he came around.

Mr. Thompson: I object to it and move the answer be stricken unless it makes the test laid down by your Honor, of identification of the time, place and names.

By Mr. Dins:

Q. Can you recall the name of the dealer and the time this was told to you?

A. I can't recall the dealer, but I know the salesman, Joseph Snyder, with the Atlantic Refining Company.

Q. Now, the dealers, you don't recall his name? Where was his station, do you recall that?

A. Fifty-five and Walnut.

Q. And can you give us a time, approximately that that occurred?

A. You mean the date?

Q. The date that he told you he—

A. No, I couldn't. I couldn't.

464 Q. Well, you stated about a year ago, did you not?

A. Yes it was about a year ago. It was—if I had to give you the month or the—the month that it happened. I couldn't. But that particular—it was not this past Spring, Spring a year ago, we had the Du Pont Chemical man with us first rather than the Atlantic salesman. They come in the Spring of the year and work with each one of their jobbers, with their jobber salesmen, their merchandising men, they try to help the salesmen in each territory put over that particular product.

Q. Are there any Atlantic station in your sales territory that advertise other than Goodyear TBA?

A. Only independents.

Q. And what is an independent?

A. Where he owns his own property.

Q. Do you know of any that fit that category?

A. Yes, sir, I do.

Q. Can you name them for us?

A. Frank Myers, 57 and Pine, Joe Klein at 38th and Walnut, and Rabins Brothers at 38th and Girard.

Q. And what do those stations advertise in the TBA line?

A. Frank Myers is Lee tires and Lee batteries, so is Joe Klein, Rabin Brothers is Lee tires, but batteries I couldn't tell you what their brand battery is.

Q. Do you know who the Goodyear supplier is in 465 your sales territory?

A. There is two or three of them.

Q. Can you name them?

A. Frank Hagan, Ernie Miller, Ed Parriss fringes my territory.

Q. Can you give us some addresses?

A. Frank Hagan is 54th and Chester Avenue, Miller is on Garrett Road in Upper Darby, and Ed Parriss is out on Sharon Hill or Glenolden, I don't know which he is now.

By Mr. Dias:

Q. Are you in competition in the sale of these TBA items with Messrs. Hagan and Miller and Parriss?

A. Yes, sir.

Q. Do you offer delivery service to these accounts?

A. Yes, sir.

Q. How often do you give them delivery service?

A. Why, I have seen customers get delivery service as high as four or five times within one day.

Q. Now, if you know—

466 Mr. Thompson: I move the answer be stricken as non-responsive.

Hearing Examiner Kolb: Read the question and answer. (The reporter read the question and answer as follows:

“Question: How often do you give them delivery service?

“Answer: Why, I have seen customers get delivery service as high as four or five times within one day.”)

Hearing Examiner Kolb: Were you referring to his delivery service—

Mr. Dias: Delivery service, his own company.

Mr. Correa: His question was what do they offer, not what is received.

Mr. Thompson: Not that he sent—

Hearing Examiner Kolb: I will overrule it and let it stand.

By Mr. Dias:

Q. Are you familiar with the Goodyear battery, Mr. Heller?

A. In what way, I am familiar with the battery, yes.

Q. Have you had any occasion to compare your battery with theirs?

Mr. Correa: I ask that the witness be instructed to answer that yes or no, because I will object to any
467 expansion on this until the witness is qualified.

Hearing Examiner Kolb: Answer yes or no.

The witness: Only as far as price-wise, to sell a dealer.

By Mr. Dias:

Q. How does your battery compare price-wise?

A. Competitive.

Q. And by that what do you mean? Competitive price-wise with Goodyear is the same less or more?

A. One battery could be more, another a little less, but I think over the whole line, they would be very competitive.

Q. Mr. Heller, referring to these Goodyear supplier points, Mr. Frank Hagan, does he compete with you and do you compete with him in your entire sales territory?

A. No, well, I think he has a certain amount of service stations that he is supposed to take care of. I don't know how their set up is as far as knowing how many dealers he has or what his territory is. I don't know.

Q. You don't know. Is that same true of Ernie Miller?

A. That is right.

Q. You don't know.

A. I don't know what their area or territory would comprise.

Mr. Dias; That is all, your Honor.

468 Hearing Examiner Kolb: We will take a short recess.

° (Whereupon, a short recess was taken.)

469 Hearing Examiner Kolb: The hearing will come to order.

Cross examination.

Cross-Examination by Mr. Thompson.

Q. Mr. Heller, are you familiar with the over-all business of the Rotzell Company?

A. Yes, sir.

Q. You have a subsidiary that operates out the main line, haven't you?

A. That's one of our branch stores.

Q. One of your companies?

A. That's right.

Q. As a matter of fact, sir, isn't it true that your company was just incorporated a year or two ago and succeeded to another company that had been operated by Mr. Rotzell?

A. That's right, sir; he passed away and Mr. MacPherson took it over.

Q. Mr. MacPherson took it over?

A. That's right.

Q. In recent years your company has been doing very well, has it not?

A. Yes, sir.

Q. Do you ever see the Dunn and Bradstreet reports on your company?

470 A. No, sir; I have not.

Q. Am I correct in my understanding that the volume of your sales and your profits have been substantially increasing in the last few years since Mr. MacPherson took it over?

A. That I couldn't say; I don't get into the books that—

Q. In dealing with service stations generally, do you offer to sell them on cash or do you give them credit?

A. We have both.

Q. Does that depend upon the appraisal of the financial standing of each of the prospective customers?

A. I take a credit statement and turn it into the office and it's up to the office to pass them on credit.

Q. Now, when you say you take a credit statement, do you mean you ask each of the service stations whom you solicit to give you information with respect to his own financial standing?

A. No, not his financial standing.

Q. Well, how do you determine when you solicit a service station whether it be Atlantic or any other one, whether you are going to offer to sell him for cash or for credit?

A. I ask him if he would like to have an open account and if he gives us the references that our office will open the account it's opened for him for credit.

Q. Could you tell us approximately how many of the

Atlantic accounts you have solicited you have offered to sell on credit?

471 A. Twelve or fifteen of them.

Q. And there are 30 to 40 in your own particular sales area?

A. That's right, sir.

Q. Now, going back, if I may, to three of the service stations whom you called "independent"—

A. Independent, that's right, sir.

Q. I think you said they owned those stations?

A. That's right, sir.

Q. Did you mean that they owned them or that Atlantic does not own them?

A. They own them—those three own them themselves.

Q. And they are what are sometimes referred to as contract dealers? Contract stations?

A. Independent.

Q. Are you familiar with that?

A. Not as contract dealers, but as independent dealers.

Q. Do you solicit those three accounts?

A. Yes, sir.

Q. Are they regular customers of yours?

A. Yes, sir.

Q. What do you sell them?

A. Hard parts, chemicals and accessories.

Q. Do you sell them batteries?

A. Fill-in batteries. I have sold all three of them batteries.

472 Q. By fill-in batteries, you mean special order?

A. Yes.

Q. They don't buy batteries regularly from you?

A. Not regularly; no, sir.

Q. Approximately how many active accounts does your company have in all of Philadelphia and Delaware County, do you know?

A. No, I do not.

Q. How many active accounts do you personally handle in your sales territory?

A. About 120.

Q. And those are in various categories, I assume, of the type you have mentioned, some garages?

A. That's right, sir.

Q. Some commercial accounts, or don't you handle them?

A. No, we have a regular fleet commercial man that calls on nothing but those accounts.

Q. Do the five trucks owned by the company handle deliveries to all of the Philadelphia and Delaware County area in which you operate?

A. Yes, sir.

Q. They certainly couldn't make four or five deliveries to very many of them, could they?

A. Each store has his own truck.

Q. Each store has one truck?

A. That's right. Each store has one truck.

473 Q. And your particular store is—

A. Fifty-fifth and Walnut.

Q. And out of that store you handle deliveries to West Philadelphia and Delaware County?

A. That's right, sir.

Q. And one truck attempts to service that whole geographical area?

A. That's right, sir.

Q. Would you mind telling me what you are talking about when you refer to hard parts because the phrase is new to me and I don't quite understand it.

A. King pins, brakes, wrist pins, rings, upper pins and bushings on the front end, coil spring, motor and chassis parts.

Q. It's the sort of equipment which is used for minor repairs of automobiles?

A. That's right, sir.

Q. Is that type of business also handled by Suburban Auto Parts Company?

A. Yes, sir.

Q. That company, then, is covering the same area that you sell to, is it not?

A. No, sir; they come to City Line and go from there West.

Q. In other words, they operate in Montgomery County?

A. That's right, sir.

474 Q. And you handle Delaware County?

A. That's right, sir.

Q. Yours is an extremely competitive business, is it not?

A. Yes, sir.

Q. Do you know how many companies there are that are attempting to sell hard parts and accessories in West Philadelphia and Delaware County?

Mr. Dias: I object to the form of the question, to the use of the word "attempting".

Hearing Examiner Kolb: The objection will be overruled.

Mr. Dias: I think Commission's Counsel is restricted to the phrase "sell to".

Mr. Thompson: I shall be happy to rephrase the question, sir, if there is any objection at all on the part of the staff.

By Mr. Thompson:

Q. Do you know about how many companies competing with Rotzell solicit accounts in West Philadelphia and Delaware County?

A. Probably 15 or 18 of them, maybe more.

Q. Thank you, that's all I had.

Mr. Correa: I have no questions at the moment.

Mr. Thompson: Thank you so much, sir.

Hearing Examiner Kolb: Any further questions?

475 Mr. Dias: Just a minute.

That's all, your Honor.

Hearing Examiner Kolb: That's all, Mr. Heller. Thank you very much.

(Witness excused.)

Mr. Kelaher: May we go off the record, your Honor?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record. The hearing will come to order.

Mr. Kelaher: Mr. Examiner, counsel for respondent Goodyear and counsel supporting the complaint have entered into a stipulation with respect to the testimony of appropriate officers and employees of Goodyear if called as witnesses in this matter.

This stipulation will make it unnecessary to call officers and/or employees of respondent Goodyear in so far as we know at this time. However, it's clearly understood that this does not foreclose counsel supporting the complaint from calling such officers and employees of respondent Goodyear if circumstances later dictate. In that connection I would like to state that we are presently attempting to stipulate further testimony in the matter with respect to counsel for respondent Goodyear.

I would also like to add that counsel for respondent
476 Goodyear have cooperated fully in preparing this stipulation and along with the stipulations we have entered into with counsel for respondent Atlantic we feel that they have greatly expedited the trial of this matter.

At this time I would like to have the stipulation read into the record.

Hearing Examiner Kolb: You may proceed.

Mr. Correa: No objection.

Mr. Kelaher: United States of America, Before the Federal Trade Commission.

In the Matter of The Goodyear Tire and Rubber Company, The Goodyear Tire & Rubber Company, Inc., and The Atlantic Refining Company, corporations. Docket No. 6486.

Stipulation Re Testimony of The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc.

It is hereby stipulated and agreed by counsel for the respondents, The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc., and by counsel supporting the Complaint that if appropriate officers and employees of said respondents were called as witnesses by counsel supporting the Complaint in this proceeding, they would testify in the manner set forth below, and that the facts stated below may be accepted by the Commission for the purpose of its determination and order herein as if such witnesses had so testified and in 477 lieu of such testimony.

The statements set forth below are made solely for the purpose of this proceeding and for no other action, case or proceeding.

For the purpose of this stipulation both The Goodyear Tire & Rubber Company and The Goodyear Tire & Rubber Company, Inc. are referred to as "Goodyear."

Company Organization—Sales of TBA
(As of April 22, 1957).

1. E. J. Thomas, President, is the Chief Executive Officer of Goodyear. Under the Chief Executive Officer the Company is divided into three areas—Production, Finance, Sales—each under the general jurisdiction of an Executive Vice President.

2. Mr. R. S. Wilson, Executive Vice President—Sales, has general jurisdiction over sales including sales of TBA. Under Mr. Wilson, Mr. Victor Holt, Jr., Vice President, has direct supervision over the Tire Sales Division. (CX-80-R.)

3. O. E. Miles, Sales Manager, Tire Division, reports directly to Mr. Holt. (CX 80-R.)

4. Reporting to Mr. Miles are six Regional Managers (Eastern, Southern, Central, Midwest, Southwest and Western.). Under the six Regional Managers are forty-nine District Managers. (CX-80-S and CX-80-U.)

5. Also reporting directly to Mr. Holt is R. W. Fitzgerald, General Merchandising Manager, who has supervision over the Petroleum Sales Department, located in Akron. C. A. Eaves, Jr., became Manager of the Petroleum Sales Department on November 1, 1956, when S. A. Gaylord, Manager since January 1, 1934, became Consultant. Mr. Gaylord retired on January 31, 1957. (CX 80-T.)

6. Mr. Fitzgerald also has jurisdiction over the Associated Merchandise Department of which C. L. Metzger is Manager. The Associated Merchandise Department includes the Battery Sales Department, J. C. Thomas, Manager, and the Car & Home Merchandise Department, A. E. Patterson, Jr., Manager. The two latter departments

are charged with procurement and merchandising of, respectively, batteries and automotive accessories, sold by the Company at wholesale to dealers and at retail through its stores. (CX 80-T.)

7. Also reporting directly to Mr. Holt is L. W. Moore, General Manager, Retail Stores. Mr. Moore has over-all supervision of the approximately five hundred retail stores owned and operated by the Company and located throughout the country. These retail stores also sell at wholesale. Each store is supervised at the field level under the Manager of the District in which it is situated. (CX 80-R.)

8. Working under the various District Managers are approximately four hundred and eighty Goodyear salesmen, called "general line salesmen," who solicit and service Goodyear tire dealers. Compensation paid to the 479 general line salesmen is in the form of salary plus bonus based upon sales quotas reflecting the potential of their territory.

9. The tire dealers solicited and served by the Goodyear general line salesmen include over 12,000 independent franchised Goodyear tire dealers plus an unknown but very substantial number of dealers who sell Goodyear tires but who have no contracts with Goodyear. Most of the contract dealers handle batteries and accessories, but this is at their election. Full TBA is available to them but is not required. The contract dealers sell to anyone who will buy—motorists, other dealers, commercial accounts, industrial accounts, government accounts, etc. Many solicit petroleum service stations and some may solicit oil company distributors.

10. The general line salesmen do not ordinarily attempt to call regularly on the many thousands of petroleum service stations scattered throughout the country. Instead they concentrate most of their sales efforts on the TBA

supplying dealers who in turn solicit and service their petroleum service station customers.

11. "TBA Supplying Dealer" is a term used to designate a franchised Goodyear tire dealer who, as a part of his normal business (which may and often does include retailing) serves as a wholesaler of Goodyear TBA to petroleum service stations. He buys his TBA from Goodyear on the same regular program as to price, discounts, terms, product-availability, etc., as is extended to all other Goodyear tire dealers, including even some petroleum service stations which, because of the nature or volume of their TBA business, may elect to purchase directly from Goodyear, in which event they would be franchised directly as Goodyear tire dealers.

12. The TBA supplying dealer is also solicited and assisted, particularly with respect to the petroleum service stations which he supplies, by one or more Goodyear Petroleum Representatives. Of a total of thirty-eight Petroleum Representatives, four are currently assigned to work on the Atlantic TBA program. The function of the Petroleum Representative is to cooperate closely with all oil company sales personnel in training and assisting petroleum service stations in selling TBA, thus furnishing liaison at the field level between Goodyear and the petroleum company as well as between Goodyear and the petroleum service stations. Goodyear's Petroleum Representatives are compensated on a salary basis.

13. The names of the four Petroleum Representatives currently assigned to work on the Atlantic TBA program are as follows:

Albert H. Shafer—Division Petroleum Representative

John Fitzgerald—Philadelphia-New Jersey Region

Frederick J. Dowling—New England Region (Deceased 4/26/57, successor to be named.)

John P. Anthony, Jr.—New York Region.

481 Products—

14. The entire range of Goodyear passenger and truck tires is made available to Atlantic accounts under the sales Commission Plan.

Passenger tires are offered in all sizes, tube-type or tubeless, black or white sidewall, and in various types and thread designs. They are priced as follows:

Price Category	Brand
Premium line	—Double Eagle (10 different sizes) —Captive-Air (10 different sizes) —Blue Streak (6 different sizes) —Nylon custom Super-Cushion (13 different sizes)
First line	—Custom Super-Cushion (22 different sizes) (also sold for original equipment purposes)
Second line	—De Luxe Super-Cushion (8 different sizes) —Nylon De Luxe Super-Cushion (5 different sizes)
Third line	—Super-Cushion (3 different sizes)

Premium line tires are made with Nylon cord, first and second line tires with both nylon and rayon, and third line tires with rayon.

Truck tires are also available in all sizes, in many 482 different types and tread designs. The principal groupings, according to use, are highway, off-the-road and industrial. Truck tires represent 7 percent to 10 percent in dollar volume of all Goodyear tires sold under the Sales Commission Plan with Atlantic.

Goodyear's current prices for passenger and truck tires are shown in CX Nos. 229-237 inclusive.

15. In addition to tires and tubes, the products manufactured by Goodyear and sold under the Sales Commission Plan with Atlantic are:

Retread and repair materials

Fan Belts

Radiator hose

Goodyear's ~~current~~ prices for these products are shown in the following exhibits: CX 238, CX 239 (Retread and repair materials); CX Nos. 242-246 inclusive (Fan belts); CX 242-246 inclusive (Radiator Hose).

16. Products sold by Goodyear under the Atlantic Sales Commission Plan which are purchased from others for resale are:

Automotive batteries

Various automotive accessories.

17. Automotive batteries are manufactured for Goodyear for resale under its own brand, in approximately equal quantities, by Electric Auto-Lite Company, main 483 office at Toledo, Ohio, and Gould-National Batteries, Inc., main office at St. Paul, Minnesota. Batteries manufactured for Goodyear are both wet and dry charge and are of various different qualities, sizes and types. Current price lists for batteries are shown in CX Nos. 240-A-D, 240-E-H and 241.

18. The more important categories of automotive accessories purchased by Goodyear for resale under the manufacturer's brand to Atlantic service stations under the Sales Commission Plan include:

Accessory	Brand	Mfrs. Address
Spark Plugs	AC	AC Spark Plug Div. General Motors Corp. 1300 North Dort Highway Flint 2, Michigan
Oil Filters	AC	—See above—

Accessory	Brand	Mfrs. Address
Oil Filters	Purolator	Purolator Products Inc. 970 New Brunswick Ave. Rahway, New Jersey
Cleaners, Polishes and Waxes	du Pont	E. I. Du Pont de Nemours & Co., Inc. Specialties Div. Wilmington 98, Delaware
Cleaners, Polishes and Waxes	Johnson	S. C. Johnson & Son, Inc. Racine, Wisconsin
484		
Cleaners, Polishes and Waxes	Simoniz	Simoniz Company 2101 Indiana Ave. Chicago, Illinois
Cleaners, Polishes and Waxes	Mac's	Mac's Super Gloss Co. Inc. 6040 N. Figueroa St. Los Angeles 42, California
Radiator Chemicals	du Pont	—See above—
Radiator Chemicals	Warner	Warner-Patterson Co. 920 South Michigan Ave. Chicago 5, Illinois
Auto Lamps and bulbs	Westing- house.	Lamp Division Westinghouse Electric Corp. MacArthur Avenue Bloomfield, New Jersey
Wiper blades	Anco	The Anderson Company Gary 40, Indiana

Current price lists covering the above accessories are shown in CX Nos. 242-246, inclusive.

19. The number of automotive batteries and automotive accessories which Goodyear sells to Atlantic accounts under the Sales Commission Plan is but a very small part of the total number of such items which Goodyear purchases and resells to all its customers.

Flow of Distribution—

485 20. The flow of tires and tubes from Goodyear factory to consumer, via the Sales Commission Plan with Atlantic, is generally:

- (a) Goodyear Factory
to
- (b) Goodyear District Warehouse
to
- (c) Wholesaler, i.e., "Supply point"
 - 1. Goodyear Tire Dealer
 - 2. Goodyear Service Store
 - 3. 100 percent Petroleum Jobber
to
- (d) Petroleum Service Station
to
- (e) Consumer

The Goodyear tire and tube factories are located at Akron, Ohio; Gadsden, Alabama; Jackson, Michigan; Los Angeles, California; and Topeka, Kansas.

Goodyear District Warehouses are located in the following cities:

Albany, N. Y.	Buffalo, N. Y.
Atlanta, Ga.	Charlotte, N. C.
Baltimore, Md.	Chicago, Ill.
Birmingham, Ala.	Cincinnati, Ohio
Boston, Mass.	Cleveland, Ohio
486 Columbus, Ohio	New Orleans, La.
Dallas, Texas	Oklahoma City, Okla.

Denver, Colo.	Omaha, Nebr.
Des Moines, Iowa	Peoria, Ill.
Detroit, Mich.	Philadelphia, Pa.
El Paso, Texas	Phoenix, Ariz.
Fargo, N. D.	Pittsburgh, Pa.
Grand Rapids, Mich.	Portland, Ore.
Harrisburg, Pa.	Richmond, Va.
East Hartford, Conn.	St. Louis, Mo.
Houston, Texas	Sacramento, Calif.
Indianapolis, Ind.	Salt Lake City, Utah
Jacksonville, Fla.	San Antonio, Texas
Jersey City, N. J.	San Francisco, Calif.
North Kansas City, Mo.	Seattle, Wash.
Los Angeles, Calif.	Spokane, Wash.
Memphis, Tenn.	East Syracuse, N. Y.
Miami, Fla.	Wichita, Kansas
Milwaukee, Wis.	
Minneapolis, Minn.	

21. The flow of batteries from the manufacturer to consumer, via the Sales Commission Plan with Atlantic, is generally:

- (a) Battery Manufacturer's Factory
to
- 487 (b) Wholesaler, i.e., "Supply Point"
 - 1. Goodyear Tire Dealer
 - 2. Goodyear Service Store
 - 3. 100 percent Petroleum Jobber
 to
- (c) Petroleum Service Station
to
- (d) Consumer

Because of the weight factor, stocks are carried in Goodyear District Warehouses only for emergency or convenience purposes. Any customer, whether wholesaler or re-

tailer, may—and frequently Atlantic Service Stations do—order direct factory shipment; currently the minimum order for this purpose is ten batteries.

The battery manufacturers' factories are located as follows:

Electric Auto-Lite Company—

Toledo, Ohio—Main Office

Reading Battery Division

Reading, Penna.

Niagara Falls, New York

P. O. Box 336

3125 Highland Ave.

East Point, Ga.

P. O. Box 309

Lawrence Ave.

488 Owosso, Mich.

P. O. Box 97

951 South Aiken Rd.

Vincennes, Ind.

P. O. Box 591

Oklahoma City, Okla.

P. O. Box 1965

600 South West Third Street

Oakland, Calif.

P. O. Box 126

Elmhurst Sta.

Paramount, Calif. (L A)

7701 East Compton Blvd.

Gould National Batteries, Inc.—

Chicago Heights, Ill.

12th & McKinley Streets

Dallas, Texas

4935 Cass St.

Denver, Colo.

2315 15th St.

- 489 East Point, Georgia
117 East Taylor Ave.
Houston, Texas
P. O. Box #14475
Leavenworth, Kansas
1901 South Fourth Street
La Puente, Calif. (L.A.)
14500 Nelson Ave.
Lynchburg, Va.
2800 Carroll Ave.
Marlboro, Mass.
303 Mechanic St.
Memphis, Tenn.
P. O. Box #3975 Lamar Station
North Bergen, N. J.
2101 85th Street
Ogden, Utah
160 West 28th Street
West Salem, Oregon
576 Patterson Ave.
St. Paul, Minn.
1025 No. Lexington Ave.
Zanesville, Ohio
1606 Moxahala Ave.
Main Office—St. Paul, Minn.
First National Bank Building

22. The flow of automotive accessories from the supplier to the consumer, via the Sales Commission Plan with Atlantic, is generally:

490 (a) Supplier

to

(b) Goodyear Car and Home Merchandise Warehouse.
(9 in number)

to

(c) Wholesaler, i. e., "Supply Point"

1. Goodyear Tire Dealer
2. Goodyear Service Store
3. 100 percent Petroleum Jobber

to

(d) Petroleum Service Station

to

(e) Consumer

The suppliers of automotive accessories are located in various states. The nine Goodyear Car and Home Merchandise Warehouses are located in or near the following cities:

Boston, Mass.

Kansas City, Mo.

Chicago, Ill.

Los Angeles, Calif.

Cleveland, Ohio

Philadelphia, Pa.

Dallas, Texas

Portland, Ore.

Gadsden, Ala.

With the exception of Boston and Dallas, none of the above warehouses are located at the same address as any of the Goodyear District Warehouses listed in Par. 20 above.

23. In some instances an Atlantic service station may buy TBA direct as a franchised Goodyear dealer, in 491 which event there would be no intervening wholesaler.

On occasion such a service station may supply other service stations, thereby functioning as a wholesaler as well as retailer.

Supply Points—

24. The function of a supply point is to satisfactorily sell, service and supply TBA to its customers at wholesale competitive prices. This requires the carrying of balanced stocks of these items and the maintaining of adequate

facilities and equipment, often including one or more TBA Supply Trucks with driver salesmen.

25. Each Goodyear District Manager is responsible for distribution in his territory, and it is therefore part of his job and responsibility to find and provide supply points which will render the best service to those Atlantic accounts in his territory purchasing Goodyear TBA. Supply points buy and sell on the same terms as do all wholesalers of Goodyear's products and they receive no extra compensation for servicing Atlantic accounts under the Sales Commission Plan.

26. The number of Atlantic accounts served by a given supply point naturally varies according to local market factors. The average is approximately 16.

27. The majority of supply points serving Atlantic accounts are independent franchised Goodyear tire dealers — TBA Supplying Dealers. Such dealers are entirely independent businesses. They sell Goodyear TBA or competitive lines of TBA to whomever they please, whether petroleum or non-petroleum accounts and without reference to whether or not such customers are connected with any Sales Commission Plan. Some Atlantic service stations serve as supply points but Atlantic does not designate which ones are to serve as such.

28. In some local areas there is a lack of independent dealers with adequate facilities for satisfactorily functioning as a supply point, or there is a lack of such dealers desiring to assume the responsibilities involved in being a TBA Supplying Dealer. In such areas the Goodyear District Manager may select the nearest Goodyear Service Store to act as the authorized supply point.

29. In certain local areas where neither independent dealers nor Goodyear service Stores are available to serve Atlantic accounts, such accounts may be supplied directly from Goodyear Districts and/or warehouses.

30. Atlantic actively participates in the improvement of TBA supply service to Atlantic petroleum outlets. It calls the attention of Goodyear to any inadequacy or weakness in the supply point service and suggests ways in which better service can be rendered. Such suggestions may include the addition of new supply points, enlargement of inventory or improvement in delivery service.

Similarly, improvements may be initiated by Goodyear itself or by suggestions offered by the supply points or by the Atlantic dealers purchasing Goodyear TBA.

Mechanical Features and Forms—

31. Commissions are paid monthly by check from Goodyear's Accounting Department in Akron. Under the sales commission plan Atlantic receives a commission of 7½ percent on sales of Goodyear TBA to Atlantic's franchised distributors. No further commissions are paid with respect to any Goodyear TBA which Atlantic service stations may purchase from the Atlantic distributors. Some Atlantic service stations may buy a part of their Goodyear TBA from Atlantic franchised distributors and part from designated supply points. In such cases Atlantic receives the ten percent commission only on those purchases from the designated supply points. In order that the payments due Atlantic under the terms of the Agreement may be accurately computed upon the basis of reliable sales figures, certain forms are used.

32. Form G-1209 (CX 41-B) is the basic record which shows that sales by the Goodyear supply points to the designated Atlantic dealer are subject to the payment of a sales commission by Goodyear to Atlantic. Generally the form is, in the first instance, prepared by Atlantic and forwarded to the Goodyear District Manager. The Goodyear District Manager designates on the form the supply

points whose sales to the particular dealer will be
494 subject to the payment of a sales commission by Good-
year to Atlantic. The Goodyear approval of the ac-
count for the payment of sales commission is indicated by
the District Manager's signature to the form. (In rare
cases, less than one percent of the time, approval by Good-
year may be withheld for such reasons as temporary in-
ability to establish a supply point.) Copies of the com-
pleted G-1209 Form are distributed to the Goodyear District
Office, the Atlantic District Office, the Goodyear general
line salesman working in the area and to the Goodyear
Service Store, if any, which is approved as a supply point
for the account. An independent dealer serving as a supply
point for Atlantic accounts is furnished a list of such cus-
tomers.

33. Goodyear's policy is to solicit all Atlantic service
stations in the territory covered by the Sales Commission
Plan with Atlantic. Occasionally Goodyear will sell to an
Atlantic service station for which a G-1209 has not been
issued. When this occurs, Goodyear will recommend to
Atlantic that a G-1209 be issued.

34. Independent dealers serving Atlantic accounts as
supply points under the Plan submit monthly to the Good-
year District Office reports of their Goodyear TBA sales
to said accounts. These reports are generally made by
the supplying dealers on Form G-1201 (CX 43-B). Such
reports are not made by Atlantic service stations which
may act as supply points since commissions are paid
495 with respect to their purchases, not with respect to
their sales.

35. In rare instances the independent supplying dealer
does not maintain adequate bookkeeping facilities which
would enable him to readily fill out and submit the G-1201
Forms. Also, occasionally, periodic checks by Goodyear
of purchase volume against reported sales reveal that the

G-1201's submitted by a particular supplying dealer are inaccurate. In either of these cases, the use of the G-1201 will be discontinued and the sales of the dealer to his Atlantic accounts will be reported on Form G-1208 (CX 44-B). This Form is generally made out by the dealer and a Goodyear general line salesman working together from the dealer's invoices.

36. Goodyear Service Stores serving Atlantic accounts as supply points under the Plan submit monthly to the Goodyear District Office reports of their TBA sales to said accounts. These reports are made on Form G-1207 (CX 44-C).

37. In those instances where an Atlantic account is supplied on a direct franchise from a Goodyear District and/or warehouse, the District Office maintains a record of the TBA sales on Form B-91 (CX 44-D).

38. Form G-1204 (CX 42-B) lists all of the Atlantic dealers covered by Form G-1209 and records all of the sales for each particular month with respect to which commissions are to be paid by Goodyear to Atlantic. 496 Names of the Atlantic dealers are entered on the Form by Atlantic and the Form is forwarded to Goodyear. Thereafter, Goodyear fills out the remainder of the Form from information obtained from Forms G-1201, G-1208, G-1207 and B-91 which has been collected by the District Office.

39. Copies of the completed G-1204's are submitted monthly by the Goodyear District Office to Atlantic and to Goodyear, Akron and are used for calculating the commissions due Atlantic.

40. One other Form has been received in evidence, Form B-80 (CX 45-B) which has no connection with the Sales Commission Plan. This Form is maintained by each Goodyear District Office and on it are accumulated all sales including those reported on the above-mentioned Forms

and those having nothing to do with the Sales Commission Plan. Names of customers are not written down on the B-80, this form merely being a master summary of all sales used for general accounting purposes.

Atlantic Dealers—

41. The great majority of Atlantic dealers designated on Form G-1209 are indirect Goodyear accounts. These are accounts which purchase Goodyear TBA from a direct Goodyear franchised dealer. A number of Atlantic dealers are themselves direct Goodyear dealers and purchase their

Goodyear TBA directly from the Goodyear district.
497 Such indirect and direct dealers may sign Forms designated as Associate Dealer Agreements (CX 44-E) and Goodyear Service Station Agreements (CX 44-F and CX 44-G), respectively. Goodyear is a party to the direct franchise contract but not to the indirect franchise contract.

42. Goodyear generally learns from Atlantic that a new Atlantic service station has opened up or that a new operator has taken over an existing Atlantic station. Such a dealer is contacted by the Atlantic sales representative and by either a Goodyear general line salesman, a Goodyear Petroleum Representative or a representative of the Goodyear supply point. Each of these persons will endeavor to promote the sale of Goodyear TBA to the Atlantic dealer. If it appears that such a dealer is a potential customer for TBA, a G-1209 Form will be issued in the manner described above.

43. Atlantic accounts which are direct Goodyear dealers are called on by Goodyear general line salesmen at such intervals as will assure maximum sales results. These accounts generally carry a large inventory, and visits by Goodyear general line salesmen will be at one, two, four

or six week intervals depending upon the particular necessities.

44. Atlantic accounts which are indirect or Associate Dealers are visited by the salesmen of their supply points.

Such accounts normally carry a small inventory and 498 depend upon frequent solicitation and quick service.

Their supply point salesmen call on them bi-weekly or at least once a week. These indirect accounts are so numerous and their individual unit volume of purchases are so low that Goodyear considers it to be more economical and efficient to have them solicited by their nearby supply points than by its general line salesmen who are primarily concerned with direct accounts.

45. All Atlantic accounts, whether direct Goodyear dealers or Associate Dealers, are regularly solicited for TBA by Atlantic Salesmen who carry Goodyear TBA order blanks. While Atlantic does not take title to the Goodyear products, its salesmen take orders which they forward to the supply points.

46. A number of Atlantic accounts as to which a Form G-1209 has been issued do not in fact buy any Goodyear TBA products. Many Atlantic accounts buy competing TBA products. All such accounts, however, continue to be solicited by Goodyear, by Atlantic and by supply point salesmen.

47. Goodyear prepares an inventory guide (CX 247-B) which is made available to all petroleum service station customers including Atlantic stations. The guide is based on the actual experience of thousands of average and high-gallage service station outlets. The purpose of the guide is to recommend quantities and types of merchandise 499 to be carried so as to secure maximum sales with minimum dollar investment.

48. Goodyear and Atlantic have agreed upon the design of metal signs and window valances which are made

available by Goodyear to all Atlantic outlets on a no-charge basis. In certain cases Atlantic dealers may want special signs such as electrical signs. These are available on a rental basis.

49. Cooperative advertising is available to all Atlantic service stations, direct dealers and associate dealers, on the same basis it is offered to all other Goodyear dealers and associate dealers. The types of cooperative advertising currently available embrace newspaper, radio, television and telephone directory advertising.

Additional Facts About the Goodyear-Atlantic Relationship and the Sales Commission Plan—

50. Goodyear had never had any kind of marketing arrangement with Atlantic prior to the commencement of the Sales Commission Plan in the Newark area on June 12, 1950. Goodyear solicited TBA business from Atlantic service stations for many years prior to June 1950. However, Goodyear's staff was never able to regularly call on and adequately service all Atlantic stations in any given area.

51. The sales commission agreement entered into by Goodyear and Atlantic was the result of negotiations between the two companies following the receipt by Goodyear of Atlantic's letter of January 19, 1948 (CX 1-A). On April 6, 1948 Goodyear declined to make a proposal to Atlantic (CX 3-A), but under date of May 4, 1949 it notified Atlantic of its interest in discussing the subject of marketing TBA through petroleum service stations (CX 4-A-B). In May 1950 Atlantic notified Goodyear of its desire to test the Sales Commission Plan in the Newark area. Operation of the Newark test commenced on June 12, 1950. Subsequently, as of March 1, 1951, the plan was adopted by Atlantic for three of its marketing

regions—the New England Region, the New York Region, and the Philadelphia-New Jersey Region.

52. If there were no Sales Commission Plan with Atlantic, Goodyear and its supply points would have to increase very substantially the size of their sales forces and the extent of their sales promotion efforts in order to solicit and service the Atlantic accounts now buying Goodyear TBA in the manner and on the scale possible under the present plan.

Dated: June 24, 1957.

501

Cahill, Gordon, Reindel & Ohl,
By Mathias F. Correa,
63 Wall Street,
New York 5, New York,
*Attorneys for the Goodyear Tire &
Rubber Company and the Goodyear
Tire & Rubber Company, Inc.,
Respondents.*

Counsel Supporting the Complaint.

502 Mr. Kelaher: Your Honor, our next witness is scheduled for 2:00 o'clock; so I suggest that we adjourn until that time.

Hearing Examiner Kolb: He won't be here until 2:00?

Mr. Kelaher: He may be here at 1:30.

Hearing Examiner Kolb: Do you want to adjourn until 1:30 or do you want to adjourn until 2:00?

Mr. Kelaher: How about counsel for the respondents?

Mr. Correa: We are here, your Honor, far from home and our offices and our regular businesses, so that it doesn't matter to us.

Hearing Examiner Kolb: If he will be here at 1:30 I suggest we return at 1:30; however, if he won't be here then, why, that is something else.

Mr. Kelaher: We have every reason to believe he will be here at 1:30, your Honor.

Hearing Examiner Kolb: All right. The hearing will be adjourned until 1:30.

(Whereupon, at 11:35 o'clock a. m., the hearing in the above-entitled matter was recessed to reconvene at 1:30 o'clock p. m. this day.)

503

Afternoon Session.

(1:40 p. m.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Dias: I call Mr. Duboff.

MYER DUBOFF, was thereupon called as a witness on behalf of the Commission and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address for the record, please?

A. Myer Duboff, 45th and Lancaster Avenue, Philadelphia, Pa.

Q. And the name of the company?

A. Lancaster Auto Supply, 4500 Lancaster Avenue.

Q. What type business is the Lancaster Auto Supply Company in?

A. Well, we sell automotive parts, we sell supplies, machine shop work, anything in the automotive business. We sell oil filters, spark plugs, fan belts, radiator hoses, anything and everything in the business.

Q. Can you give us the trade names of the products you handle in the chemical line for example?

A. DuPont, Prestone.

504 Q. How about fan belts and hoses?

A. That is Raybestos.

Q. And batteries?

A. Exide, AC oil filters.

Q. That will do. What is the sales area of the company, Mr. Duboff?

A. Well, we are actually selling all over Philadelphia. We sell in the suburbs of Philadelphia, and the outside area.

Q. So to what class of customers do you sell?

A. Service stations, independent garages, industrial people, and well, contractors, we sell to stores, we try to cover every phase of the business.

Q. How many salesmen are employed there?

A. At the present time I believe there are about four.

Q. How are they compensated?

A. Salary plus commission.

Q. Is that the way you are compensated, too?

A. That's right, sir.

Q. Do you operate any trucks for delivery purposes?

A. We have two, three, we have I would say about five or six vehicles for service.

Q. Do you use those trucks for delivery service?

A. We use them for pick-up and delivery, yes, sir.

Q. How long have you been with the company, Mr. Duboff?

A. I would say roughly about 10 years.

505 Q. And in what capacity?

A. As a salesman, outside salesman.

Q. And what is your sales territory for the company?

A. Well, I can go anywhere, actually. If a fellow—in other words, if I know somebody in another section of

town, I can go up there and do business. I am not limited; I have the entire city at my disposition, anywhere I want to travel.

Q. What type customer do you solicit?

A. Everything and anybody in the business, the same thing as I said before.

Q. That includes service stations?

A. Service stations, garages, stores.

Q. In your sales territory, are there any Atlantic stations?

A. Yes, there are.

Q. Do you solicit their business?

A. Yes, I try to solicit their business.

Q. Do you sell to any of them?

A. I sell to a few independents. I can't sell to the company-owned stations, impossible.

Q. Will you define an independent?

A. Independent is a man that owns his own building, and is just selling Atlantic products, more or less their gas and oil.

Q. Do you have some idea of the number of Atlantic stations in your territory?

A. I would say anywhere between 30 and 35 that 506 I actually could maybe do business with.

Q. And do you solicit those, all of those?

A. No, I gave them up for a bad job to tell the truth, because you keep on going in there and they say they can't buy from you; not all of them, some of them.

Q. Do you sell to any of them?

A. Independents, we do, yes.

Q. What other type are there?

A. I beg your pardon?

Q. What other type stations?

A. Well, there is company-owned stations.

Q. I see. Now as to the independents, what do you sell to those stations, Atlantic stations?

A. To the independents we sell the entire line, to tell the truth. We sell wherever we can, fan belts, hoses, spark plugs, filters. We sell a complete line to them.

Q. And as to the other type Atlantic stations, do you sell to any of those on a regular basis?

A. I don't quite understand the question, sir.

Q. You have named independent Atlantic stations and company-owned Atlantic stations—

A. (Interposing.) I see what you mean.

Q. Now to company-owned stations, do you sell to any of those?

A. No, I can't sell them.

Q. Do you sell them anything outside of the TBA line?

507 A. I was at one time selling mufflers and some other things that didn't pertain to any of the products of the company.

Q. When did you sell to them?

A. Well, I would say within a period—to some of them. Now I don't remember exactly, about a year ago or something like that.

Q. You—at any time were you able to sell to any of the—in years past—able to sell to any of the Atlantic stations?

A. How many years are you speaking about, sir?

Q. Well, when was the last time you were able to sell to them?

A. Well, it is getting tougher and tougher to sell them, to tell the truth.

Well, I would say within the last couple of years it is getting worse.

Q. Do you continue to solicit their business?

A. I try to, but it is like barking up a tree. I mean,

you can't do anything with these fellows; they must buy from the company and that is the answers I get.

Mr. Thompson: I move that last answer be stricken, sir.

Hearing Examiner Kolb: Read the answer, please.

(Answer read.)

Hearing Examiner Kolb: Motion to strike denied.

508 By Mr. Dias:

Q. Can you state specifically the name of any Atlantic dealer that told you that?

A. I. Mann, at Brookhaven and Haverford Road.

Q. And can you place a time on that, please?

A. Well, that is every time.

Q. When was the last time you called on him?

A. A couple of months ago, I would say four or five or six weeks ago.

Q. Are there any others who made similar statements to you?

A. Well, they all beat around the bush. They just don't come out directly; they tell you they must still buy from their supplier.

Mr. Correa: Could we have these conversations fixed, the date, with whom, and exactly what was said, instead of these conclusionary answers?

Hearing Examiner Kolb: Try to fix the time of your conversations.

By Mr. Dias:

Q. Can you fix a time that these conversations took place, and the name of the party with whom you had the conversations?

A. Well, I. Mann has been right along, five or six weeks ago, and I will state that and that is true.

Q. Then I asked you if there was another one. Was there another instance of that?

509 A. Well, I can't actually at this time give you a specific date and time and specific persons because lots of time some of these fellows have given up their stations instead of going on with what they are doing.

Q. You say there are about 35 Atlantic stations in your sales territory?

A. I would say at least that, yes, sir.

Q. Have you noticed the type TBA that is carried in those stations?

A. Yes, sir.

Q. What brand is primarily advertised?

A. Goodyear products right down the line. Goodyear, AC spark plugs, AC filter, also their batteries, radiator hoses and fan belts.

Q. Do you know who the Goodyear supplier is in your territory?

A. Well, the one that I run into mostly is Frank Hagan.

Q. Are there any others?

A. Well, there is Ernie Miller up on Westchester Pike; there is Ellwood Kieser downtown.

Q. Are your products competitive with the Goodyear products sold by these three supply points?

A. Yes, sir.

Mr. Correa: I object to that, if your Honor please.

Hearing Examiner Kolb: Did you say the products, 510 are they competitive?

Mr. Dias: Yes, sir.

Hearing Examiner Kolb: Objection overruled.

Mr. Correa: I submit, if your Honor please, it is impossible to tell what the witness means or what counsel means for that matter by "competitive".

Hearing Examiner Kolb: I think we all understand it.

Mr. Correa: I beg to differ with your Honor. I don't understand what it means, and I submit it has no such

well recognized meaning to make this kind of evidence admissible in this proceeding.

Hearing Examiner Kolb: I overruled the objection.

Mr. Correa: Exception.

Hearing Examiner Kolb: Read the question to the witness.

(The reporter read the question and answer as follows: "Question: Are your products competitive with the Good-year products sold by these three supply points? Answer: Yes, sir.")

Mr. Correa: May I supplement my objection by adding that the witness has not been qualified as able to testify to this matter and therefore there is no proper foundation laid.

Mr. Dias: This man has been a salesman for 10 years in the automotive supply business. I think case law 511 will sustain the position on the question to the effect that a man that has been in the business the length of time he has is certainly qualified to testify that, whether or not he is in competition with any given product.

Mr. Correa: If competition means, for example, quality, the witness, I submit, is not qualified. We have no showing in this record as to whether he is sufficiently expert to be able to deal with the relative merits of one battery and another battery, or one tire and another tire, let's say.

Hearing Examiner Kolb: I ruled on the objection. Proceed.

By Mr. Dias:

Q. If I have asked you this, you can stop me. Did I get the brand names of the products that you sell, batteries—

A. (Interposing.) Yes, you did.

Mr. Dias: That is all.

Hearing Examiner Kolb: Cross examination.

Cross-Examination by Mr. Thompson.

Q. You said there were four salesmen for the company, Mr. Duboff?

A. Yes, sir.

Q. Were all four of them selling all over the city of Philadelphia and the suburbs?

512 A. We do, sir.

Q. Do you all sell the full line of all of the merchandise, wholesaled by Lancaster Auto Supply Company?

A. I don't get that, sir.

Mr. Thompson: Would you read the question, please?
(Question read.)

The Witness: Wholesale and retail.

By Mr. Thompson:

Q. I guess I didn't make my question clear. Are all four of you engaged in soliciting whatever accounts you want all over the city?

A. Yes, and the suburbs.

Q. And all four of you try to sell all of the different items of merchandise which is handled by Lancaster Auto Supply, is that correct?

A. That is true.

Q. So that all four of you might be calling on the same garage?

A. Never on the same one. We all know each other's customers; sometimes I can't sell a man and the other fellow can.

Q. Your company does a lot of repair work, does it not?

A. I wouldn't say to the extent we used to, years ago. We don't repair cars. We do shop work.

Q. Does the phrase "hard parts", is that familiar to you?

A. Yes, sir.

513 Q. That is your company's specialty, is it not?

A. No, I wouldn't say that, sir. We only have two men in the shop. We used to have six and eight and ten people in the shop at one time.

Q. No, but your company sells hard parts to various retailers throughout the city, do you not?

A. Yes, sir.

Q. And that is your specialty, is it not?

A. No, it is not our specialty, no, sir.

Q. About 75 percent of your sales?

A. No, sir.

Q. What percentage, would you say?

A. I would say 20 percent, as a top. We only keep this as a background more or less to get the other business, but I am not in a position to tell you exact percentages. I only say 20 percent out of the sky, I don't know. I know it is very little.

Q. How about service station equipment, do you sell that?

A. Yes, we sell that.

Q. And that is a fairly large part of your business, is it not?

A. No, it is not, no, sir.

Q. What is the largest part of your business, accessories?

A. No, everything but hard parts, sir. Well, if you say accessories, your spark plugs, oil filters, fan belts, 514 hoses, that is repeat business, it is quite a bit, a lot of business.

Q. And that is your principal business?

A. Batteries, antifreeze. Yes, sir.

Q. And service stations are your principal customers?

A. Not necessarily. I wouldn't say principal. We do have other customers besides service stations.

Q. The company made great progress in their annual volume of sales in recent years, hasn't it?

A. I don't know. I am not in a position to answer that.

Q. How about your end of the business? Hasn't that been increasing substantially, your own sales?

A. My business is all right, yes, sir.

Q. About 70 percent of your sales are cash, are they not?

A. No, they are not.

Q. What percentage would you say?

A. I don't know, again, I do not know the percentages of cash against charge. I am only a salesman, sir.

Q. How about from your experience as a salesman, aren't most of your sales for cash?

A. No, sir.

Q. You handle credit accounts?

A. I don't handle them personally, no. We have a credit department that takes care of that.

Q. But you handle accounts to whom your company extends credit?

515 A. Yes, if the man is open, I certainly give him credit to leave him sign for it until the following month.

Q. What percentage of the service station accounts that you sell to are on credit and what percentage are on cash, approximately?

A. Of my own experience, sir?

Q. Yes, your own accounts.

A. Oh, my accounts. Well, I would say about 70 percent, at least, 70 percent that are charge accounts.

Q. And the others are for cash?

A. Yes, somewhere around that.

Q. How do you deliver when it is for cash? Do you drive a truck?

A. Oh, no, sir.

Q. What do you do, take an order—

A. (Interposing.) Either I phone it in or I write it up the next day and pass it on to the boys to pull the orders and write it up and get it out.

Q. And the deliveries are made COD?

A. If it is a cash customer, yes, sir.

Q. You mentioned one person, Mr. I. Mann, of Haverford and Brookhaven Road.

A. That is right.

Q. As having said something to you about inability to buy from you. I was not clear as to what he said.

516 A. Do you want me to state what he said to me? He said to me "I can't buy from you".

Q. Had he been buying from you?

A. He was buying odds and ends and every time I came in to sell him, he would have to hide things, you would think it was the Gestapo or something. I would go in to see him and talk to him and he would say "Mike, I can't buy from you," and I said, "Why not," and he says "They know what I am doing," and I didn't think that was right.

Q. Isn't he presently buying Exide batteries from you?

A. He is not. He hasn't in years.

Q. Brake linings?

A. He might have bought some brake linings in between. Not to amount to anything, as far as I know.

Q. Jacks?

A. Jacks, no, I don't think he bought a jack. Maybe five years ago he might have.

Q. Wheel puller?

A. No, I don't think anything along that line. He did buy an impact tool from me, sir.

Q. What is an impact tool?

A. That speeds up putting the tires on and taking heads off of engines.

Q. Does your company sell assorted tools for service stations?

A. Yes, we sell assorted tools.

517 Q. Do you supply Mr. Mann with those?

A. I wouldn't say so, necessarily. He might have picked up odds and end tools he needed to fill in or something like that.

Q. Well now, let's take these hard parts. I think you said you found it impossible to sell anything to Atlantic stations?

A. Yes, sir.

Q. And that applies to hard parts, too?

A. Well, I wouldn't say—it would be the same if I walked in and see the man and asked him, I would say, ask if I can help him, anything you need along these lines, suggest these things, and hard parts is—the only time you get a hard part, you wouldn't sell a hard part directly in selling. The man would pick the telephone up and he called for delivery on a hard part.

Q. That same comment applies, would it, to service station equipment?

A. Depending on the service station equipment, sir.

Q. Do you find it impossible to sell service station equipment to Atlantic owned stations?

A. I wouldn't say that. Most of them were getting them from Alemite. They were getting their equipment from Alemite and I might be able to sell small parts, small grease guns or repair fittings, or ends, or maybe an assortment of grease fittings.

518 Q. Do you try to sell service station equipment and hard parts to the Atlantic-owned stations?

A. I wish I could, sir.

Q. Do you try?

A. I have been on the street and I just bat my head against the wall.

Q. They just won't buy anything from you?

A. They give you the same stock answer, what I said before. The same answer is what I get.

Q. And that is so regardless of what you try to sell them?

A. No, I wouldn't say that. If they want a hard part, they might call me. I don't know everything that is going on. I am in the street. They may call in, I don't know, and it goes through the works.

Q. Mr. I. Mann is the only one that you can now recall who told you that he couldn't buy from you because they wouldn't let him or something like that?

A. There are other fellows told me that.

Q. Who?

A. Who were they? Well, there was D'Ascenzo Service Station there.

Q. Where is he located?

A. He is at 49th and Lancaster, I think.

Q. And he is what you call an independent?

A. Yes, sir.

519 Q. On what side?

A. Well—

Q. He owns his own station?

A. Yes, sir.

Q. What did he say to you?

A. Well, he said they were putting the pressure on and he is right now ready to give it up, Atlantic, entirely, just on account of the pressures exerted on him, that is what he told me.

Q. Anybody else you can think of?

A. I beg your pardon?

Q. Any other names?

A. Quite a number of fellows are out of business today. I mean, I have been travelling the same territory for years and a lot of these fellows are out of business today. I can't recall the names.

Q. Have you now mentioned all the names that you can recall?

A. No, I wouldn't say that. Maybe another date I might be able to get them down. Charles Robinson was another one. He is out of business.

Q. Where was he?

A. 63rd and Ludlow.

Q. What was he?

A. He was a company-owned station.

Q. Are there any other names that you can recall?

320 A. I couldn't recall at the present time, sir.

Q. Do you know what the brush-off technique is?

A. Well, yes.

Q. Did you ever have it applied to you?

A. Well, on the street you are liable to get anything, sir.

Q. Liable to get it from almost anyone, aren't you?

A. That is right.

Mr. Thompson: That is all.

By Mr. Correa:

Q. Is this Mr. I. Mann of whom you spoke, does he sell tires?

A. Tires?

Q. Yes.

A. I guess he does. We don't sell tires, sir.

Q. Have you been in his shop, place of business?

A. Yes.

Q. Have you seen tires there for sale?

A. Yes, sir, I saw them.

Q. What kind?

A. I don't know anything about tires, I don't sell them. I don't know anything about it. I don't sell tires, I wasn't concerned with it.

Q. Isn't it a fact that he sells Lee tires?

A. I don't know.

Q. You can't recall it, sir?

A. No, sir, I don't have anything to do with tires.

521 Mr. Correa: I have no further questions.

Redirect Examination by Mr. Dias.

Q. You were asked whether or not the company's business had increased. Has your own business increased in your sales territory?

A. Well, my business is increased on account of the higher dollar now, everything costing more, more or less.

Q. How much of that increase was due to larger or greater sales or more numerous sales to Atlantic stations?

A. Well, I took an independent man at 66th and Haverford Avenue and that man has been giving me over a thousand dollars a month from an independent gas station.

Q. What brand?

A. ~~Atlantic gas station, and he has since changed over~~
this last week.

Q. What was his name?

A. James Amen.

Q. What type merchandise were you selling him?

A. The complete line, Exide batteries, AC filters, AC spark plugs. I changed over from Goodyear belts to Raybestos last week so I will be selling Rabestos instead of Goodyear fan belts.

Q. Did you give us his address?

A. 66th and Haverford Avenue.

522 Q. Can you recall any other Atlantic business that has resulted in your particular increase in business in your territory?

A. Particular—what?

Q. In TBA, that is.

A. I didn't quite get the question, sir.

Q. You have testified that your business in your territory has increased?

A. It has.

Q. And you have stated that your business with James Amen for example, runs about a thousand dollars a month?

A. That is right.

Q. Now my question is: Are there other Atlantic stations that buy similar lines from you?

A. No, I can't do any business with them, sir.

Q. Then is the overall increase in business in your territory due to increase in Atlantic sales, sales to Atlantic stations?

A. Is the overall business—

Q. Is your overall increase in sales in your territory a result of increased sales to Atlantic stations?

A. I still—you better word that again.

Q. Let me pass that up. On cash sales, do you get credit for cash sales that may be made?

A. Not so much, no. I don't get too much credit, 523 unless I know who the account is. There is a special folder on cash sales, I have a girl taking care of it. It is a long story. I get it and yet I don't. I will put it that way.

Q. You mentioned that Mr. Robinson said something about pressure. What did he tell you?

A. He told me everything under the sun. That man told me everything. This has been going on—the gas station has been taken over a number of times, a couple of fellows since, and all the time he had it, it was tough. It was tough grinding there. He said he had to buy, he had to buy from the dealers, is what he told me.

Q. Can you tell us when that was?

A. That is going back, I would say, about six years ago, I guess.

Q. Now let me return to the increase in business in your territory. Mr. Thompson asked you if your business had increased, do you recall that, in your territory?

A. Has it increased?

Q. It has increased?

A. It has, yes, sir.

Q. It has, you say?

A. Yes, sir.

Q. Can you recall roughly what it was, what your monthly business was, for example?

A. Well, I know I am keeping going up the ladder, 524 I will put it that way.

Q. Now in going up the ladder, is it due to increased sales to more Atlantic stations?

A. No, no, sir. In other words, if I had more Atlantic stations, I would have more volume. I would love to do business with them.

Q. Now you also mentioned that D'Ascenzo complained of pressure. Can you recall what type of pressure, did he mention that?

A. No, he said they are bothering the life out of me, he is fed up to here and ready to throw in the sponge.

Q. Who did he refer to as they?

A. Atlantic Refining.

Mr. Dias: That is all, your Honor.

Hearing Examiner Kolb: Any further questions?

Recross Examination by Mr. Correr.

Q. Were you interviewed by representatives of Federal Trade Commission prior to your testimony here?

A. Was I—what?

Q. Were you interviewed by representatives of Federal Trade Commission?

A. A man came into the store, yes.

Q. When?

A. That has been a long while ago.

525 Q. Give me an estimate.

A. An honest estimate, now wait a minute. I would say about six months ago.

Q. Was that the last time?

A. That is the last time I saw the man, that is right.

Q. Was that the only time?

A. That's right.

Q. Did you give any statement in writing concerning the matters about which you have testified?

A. I didn't give any statement in writing, no, sir.

Q. Have you written him or anybody else connected with the Federal Trade Commission any letters?

A. No, sir.

Q. Nothing at all in writing?

A. No, sir.

Mr. Correa: I have nothing further.

By Mr. Thompson:

Q. Mr. Duboff, were you advised by the representative of the Federal Trade Commission of the nature of this proceedings when he called upon you?

A. I wasn't advised about it, the nature of it. He just asked me questions about what was going on and I told him I couldn't sell Atlantic gas stations.

Q. Did he tell you this proceeding was pending?

A. What, sir?

526 Q. Did he tell you that this proceeding had been started?

A. No, sir, no, sir, I never knew anything at all about it, that is was pending.

Mr. Thompson: That is all.

By Mr. Correa:

Q. Did he tell you you might be called as a witness in a proceeding?

A. Yes, he told me I might be called as a witness, yes.

Q. But he didn't tell you what the proceeding was in respect to which you might be called as a witness?

A. No, he just asked me about different questions, what is going on in the field, and I just told him, so I said I would be glad to tell the truth, which I am telling, is the truth. I said I would be glad to sit up there and tell the truth what is going on.

Q. Did you just offer to be a witness without knowing of any proceeding or did you know there was a proceeding?

A. He did not tell me there was a proceeding of any kind.

Q. But he did tell you you might be needed as a witness?

A. I don't recall.

Q. There was some discussion, I gather, from what you told us about your testifying as a witness.

A. No, I don't recall him saying I would be a witness. He asked me about what was going on and I told him what was going on in the field.

527 Q. Didn't you say a moment ago he told you you might be needed as a witness?

Mr. Dias: Your Honor, I object to this line of questioning. I don't see it is relevant.

Mr. Correa: He said that a moment ago, if your Honor please. I think his credibility is in issue.

Mr. Dias: I don't see how it affects this proceeding one way or another.

Mr. Correa: If he says one thing five minutes ago and another thing now, that affects his credibility. Maybe that doesn't affect this proceeding in your idea, but it does in mine.

Hearing Examiner Kolb: Objection overruled. Read the question, please.

(The reporter read the question as follows: "Question: Didn't you say a moment ago he told you you might be needed as a witness?")

The Witness: If I said that, I made a mistake, because I don't recall him ever saying I might be a witness against Atlantic Refining. I do not recall that.

By Mr. Correa:

Q. But your present recollection, as of this moment, is that there was no discussion between you and this individual about your testifying as a witness?

A. There was no discussion, no, sir.

528 Q. That is your best present recollection?

A. That is right, sir.

Mr. Correa: That is all.

By Mr. Thompson:

Q. When did you learn you were going to be a witness?

A. When I got the subpoena from them.

Q. When the Federal Trade Commission representative called upon you, did you tell him about your conversation with Mr. I Mann?

A. I told him about that, yes, sir.

Q. Did you tell him to the same effect that you have testified here, about what Mr. Mann said?

A. Well, I might not be wording it word for word, but more or less it would be somewhat similar.

Q. Well, I am curious to know how you could have done that if it is true, as you testified, that the Federal Trade Commission representative came to see you six months ago, and you had this conversation with Mr. Mann five or six weeks ago?

A. You asked me if the case was pending, and I said, I don't know about a case pending.

Mr. Thompson: Read the question, please, and you listen carefully.

(Question read.)

A. Well, the Federal Trade Commission man came
529 into our place, it wasn't against Atlantic Refining,

sir. And any question that you are asking me, might I have them mixed up with another case entirely.

By Mr. Thompson:

Q. Did he come back and see you again?

A. I don't recall.

Q. Don't you recall whether he came back to see you again?

A. He didn't come back to see me the second time.

Q. That is what I mean.

A. No, no, I didn't see him the second time.

Q. You haven't yet explained how you could have told a man six months ago something that happened five or six weeks ago.

A. That happened before then. I am bringing that same answer back that happened years ago.

Mr. Thompson: That is all.

Mr. Correa: One further question.

By Mr. Correa:

Q. Did this Federal Trade Commission representative that you saw make notes of what you told him?

A. Yes, he was writing something down, yes, I think he might have. I don't know. I didn't see what he was writing down.

Q. But he was making notes?

A. He was writing something down, yes, sir.

Mr. Correa: That is all.

530 Mr. Dias: Nothing further.

Hearing Examiner Kolb: That is all, Mr. Duboff.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(Whereupon a short recess was taken.)

531 Hearing Examiner Kolb: Come to order.

Mr. Kelaher: I would like to call Mr. Matthews to the stand, please.

JAMES MATTHEWS was thereupon called as a witness for the Commission and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. James Matthews, 208 Woodcrest Road, Wallingford Summit, R.D. 20, Media, Pennsylvania.

Q. Are you here in response to a subpoena?

A. Yes, sir.

Mr. Kelaher: Would you please hand it to the Examiner.

The Witness: (Handing.)

By Mr. Kelaher:

Q. Mr. Matthews, were you at one time an Atlantic leasee dealer?

A. Yes, sir.

Q. During what period and at what locations?

A. December 10, 1947 to August 15, 1949 in Darby.

Q. Would you give the addresses as you go along?

A. That was McDade Boulevard.

532 Q. Do you have any further identification on that location?

A. That is all. Just McDade Boulevard, Darby.

Q. Then did you have a station after that?

A. August 15, 1949 until June 1, 1954, Church Lane and Bailey Road in Yeadon.

Q. And after that did you operate an Atlantic station?

A. From June 1, 1954 to May 7, 1957, Baltimore Pike and Providence Road in Media.

Q. So you operated as an Atlantic leasee dealer from December 10, 1947 until last month, is that correct?

A. Correct.

Q. Mr. Matthews, when you entered your station December 10, 1947, what TBA did you begin to carry?

A. Exide batteries, Lee tires, Fram oil filters, Auto-Lite spark-plugs, Thermoid fan belts.

Q. And who was your principal supplier of TBA products?

A. Ed Parris, in Sharon Hill at that time.

Q. Do you recall attending a meeting of Atlantic dealers in or about March 1951?

A. I do.

Q. Do you recall where that meeting was held?

A. Kasfik's in Upper Darby, I believe, if I am not mistaken.

Q. And what was the purpose of the meeting?

Mr. Correa: I object to that, if your Honor please.

533 Hearing Examiner Kolb: The objection will be sustained.

By Mr. Kelaher:

Q. Would you please state who was present at the meeting?

A. Who what?

Q. Who were present at the meeting?

A. In regards to who, the company or—

Q. If there were company representatives there, just state whether—were there Atlantic dealers present?

A. Yes, sir.

Q. Were there representatives of the Atlantic Refining Company present?

A. Yes, sir.

Q. Was there a representative of Goodyear present?

A. I can't be sure.

Q. What transpired at the meeting?

A. We were told that they were going to make a change or switch in their TBA.

Q. By "they," who are you referring to?

A. The company, in regards to the stations. In other

words, they were going to take on—in others words, sponsor new products.

Q. What was the new product?

A. Goodyear tires and batteries and Goodyear accessories.

Q. And by "they," are you referring to Atlantic Refining Company?

534 A. Yes.

Q. At that time were you advised that you could purchase whatever brand of TBA you desired?

A. Yes, sir.

Q. And which brand of TBA did you desire to purchase, which brand of tires, rather?

A. Lee.

Q. Now in or about that time, did you have—or prior to that meeting, rather, did you have what is known as service station identification, did you have signs in your service station?

A. Yes, we had decals in the windows, and signs outside also.

Q. Did you have a Lee sign outside?

A. Yes, in Darby I had a neon sign.

Q. Was that a large sign?

A. (Nodding affirmatively.) I am not positive whether it was a neon sign, but it was a lighted sign.

Q. How long had that been in your station?

A. It was in Darby when I took the station over in Darby.

Q. Now during the period in or about March 1951 you stated you were at the Yeadon station, is that correct?

A. That is correct.

Q. Did you have advertising of any type on your Yeadon station prior to March 1951, and what type of advertising did you have there, TBA advertising?

535 A. We had decals in the windows at the top.

Q. What brands were advertised?

A. Exide and Lee.

Q. Now, after this meeting in or about March 1951, did you continue to have Lee and Exide signs in your station?

A. (Nodding negatively.) They were taken down and others were put up.

Q. Would you please explain that in a little detail?

A. Well, I wasn't there when it occurred. They came in when I wasn't there and took down the signs and put up these other decals.

Q. By "they," whom do you mean?

Mr. Thompson: He said he wasn't there.

The Witness: I wasn't there, but I was told it was a representative from Goodyear and an Atlantic man was with him.

By Mr. Kelaher:

Q. Did you ask that the Lee and Exide signs be taken down?

A. I did not.

Q. Did you do anything about the Goodyear signs that were put up?

A. I took them down.

Q. What happened after that?

A. They came back out and put the Goodyear signs up again.

Q. Did they remove the Lee and Exide signs?

536 A. I had no more Lee and Exide signs to put up.

They removed them the first time. The next time they came back and put them up after I took them down.

Q. How long after you removed them did they return and put the Goodyear signs up?

A. A week or so, as soon as they found out they were down.

Q. Now during the period prior to March 1951, you

stated that you sold Lee tires. Had you built up a fairly good volume in Lee tires?

A. Very good.

Q. And were you satisfied with Lee tires, price-wise?

A. Yes, sir.

Q. And were you satisfied with Lee tires as to the guarantee offered?

A. (Nodding affirmatively.)

Q. What type of guarantee was on the tires?

A. They had an unconditional guarantee; they also guaranteed against road hazard, over and above material and workmanship.

Q. And by road hazard, would you explain that a bit, what is meant by that guarantee?

A. Well, if you hit a curb and break it or hit a hole in the road and break it, it was still adjustable, based on the mileage it had travelled.

Q. And did Goodyear have a similar road hazard guarantee?

A. No.

537 Q. Did you desire—did you continue to sell Lee tires?

A. For some time after that, yes.

Q. How long after that did you continue to sell Lee tires?

A. Until, I would guess, very early in 1953.

Q. What happened at that time?

A. The company changed salesmen.

Q. By "company," you are referring to Atlantic?

A. Yes, sir.

Q. Who was the new salesman?

A. Bill Way.

Q. Will you please explain what relationship that has to do with your sale of Lee tires?

A. Well, prior to that time, I was bothered very little

with the salesmen. I very rarely saw him, and I don't think he knew what I was doing and if he did, he didn't care because he was leaving the company.

Q. In early 1953 you stated Mr. Way became the Atlantic salesman. Now would you please state what connection that has with your Lee tire sales?

A. He came out—I think his first trip was around—or he was brought around by the former salesman and introduced and nothing was said and the next time he came in a couple of days later, nothing was said. And two days later, he came in with his supervisor, Mr. Arnholt, and at that time everything broke loose then.

538 Q. By "everything broke loose," would you explain what you mean?

A. They told me what to do or else.

Q. What did they tell you?

A. They told me to get rid of Lee tires and to let's get with the company.

Q. "Let's get with the company"?

A. (Nodding affirmatively.)

Q. And did they make any comments with respect to accessories?

Mr. Thompson: Who is "they" at this point?

Mr. Kelaher: I am referring to Mr. Way and Mr. Arnholt.

The Witness: Yes, in regard to batteries they did because I had Auto-Lite batteries at that time.

By Mr. Kelaher:

Q. What comment did they make with respect to the Auto-Lite batteries?

A. They told me I had to handle Goodyear.

Q. Did you want to continue to handle Lee tires?

A. I did.

Q. And did you continue to handle Lee tires?

A. No.

Q. Why didn't you?

A. I didn't want my lease cancelled. I wanted my lease renewed when it terminated.

339 Q. Were you at any time asked by Atlantic representatives to sign a mutual cancellation of the lease?

A. I was.

Q. Would you please state when that was?

A. That was about two weeks after Mr. Arnholt and Mr. Way were there.

Q. And you fix that time early in 1953?

A. Correct.

Q. I would like for you to state just what happened then—with respect to the mutual cancellation of the lease document?

A. He came out and told me he had a cancellation for me to sign—

Q. (Interposing.) Who is "he"?

A. Mr. Way. I told him I wouldn't sign it. He told me I had to sign it and I said I didn't have to sign it. So we argued for three hours, and I didn't sign it.

Q. Was there any mention made of TBA during that conversation?

A. Sure, that is the reason he brought it out.

Q. What did Mr. Way say with respect to TBA?

A. He said I wasn't buying from the company as I was supposed to so they figured it was better for everyone concerned if I signed a mutual and they cancel my lease and I said I didn't want my lease cancelled and I said if I
540 cancelled mutual, I was making a liar out of myself.

Q. What did you say to Mr. Way as a result of the conversation?

A. I just told him I wouldn't sign it, but I told him I would be good and follow the line—actually, after we argued for two and a half to three hours, he told me then, he

softened before I did, and he told me that he couldn't force me to, and he couldn't do anything about putting me out until my lease expired in June, but that at that time my lease wouldn't be renewed. So I said all right, I will be a good boy and if I don't show a great increase in TBA and so forth by then, then you can cancel my lease and that way I felt I was going out because they wanted me to, but there was nothing I could do about it. I still wasn't making a liar out of myself by signing a mutual.

Q. After that conversation, did you increase your purchases of Goodyear TBA?

A. I did.

Q. And did you decrease your purchases of Lee tires and other non-sponsored brands of TBA?

A. Completely.

Q. So you went one hundred percent Goodyear at that time, is that correct?

A. I did.

541 By Mr. Kelaher:

Q. Did you want to change from Lee tires to Goodyear tires?

A. No.

Q. Why did you change from Lee tires to Goodyear?

A. Atlantic pressure.

Q. Did you purchase at any time Auto-Lite batteries. I believe you mentioned them, that you had them at one time.

A. (Nodding affirmatively.) I purchased Auto-Lite batteries in Yeadon, and I purchased them in Media.

Q. From whom did you purchase the Auto-Lite batteries?

A. Auto Gear and Parts, in Lansdowne.

Q. Who was the salesman?

A. Mr. Wilbur.

Q. Is he a friend of yours?

A. More or less, yes.

Q. And was any comment ever made by Atlantic representatives with respect to your purchase of the Auto-Lite batteries?

A. Yes.

Q. Are you saying yes?

A. Yes, sir.

Q. Would you please state the circumstances surrounding such comments and the approximate time thereof?

542 A. In the fall of 1954 I purchased 10 Auto-Lite batteries, and I was told at that time not to buy any more or they would find somebody with enough money to buy me out and that would be the end of my lease.

Q. Who told you that?

A. Mr. Hayes.

Q. Is Mr. Hayes present today?

A. Yes, sir.

Q. Would you identify him?

A. Yes, sir. (Indicating.)

Mr. Thompson: I didn't hear what Mr. Hayes said. May I have it repeated?

Hearing Examiner Kolb: Read the answer.

(Answer read.).

By Mr. Kelaher:

Q. Who was your Goodyear TBA supplier in Yeaton?

A. Mr. Parris, he was in Sharon Hill at that time.

Q. And who was your Goodyear TBA supplier when you moved to Media?

A. The same.

Q. Mr. Parris was your Goodyear supplier at all times?

A. Yes, sir.

Q. And prior to taking on the Goodyear TBA line, he

supplied you with Lee tires, Exide batteries, and other lines of accessories?

543 A. Yes, sir.

Q. After the mutual cancellation of lease incident, you stated you went one hundred percent Goodyear. At any time after that did you attempt or did you purchase at any time after that non-sponsored TBA?

A. In small quantities, occasionally.

Q. Was anything ever said about that by Atlantic personnel?

A. I was warned every time I did it and they found out about it.

Q. Would you please state the names of the Atlantic representatives that warned you?

A. Mr. Hayes and also Mr. Parris, of course, he wasn't an Atlantic representative, but he was selling.

Q. You mean the TBA supply man, Mr. Parris, also warned you?

A. Yes, sir. One particular incident, I had some MOA on the shelves and he thought it was foreign merchandise, Mr. Hayes, and he asked me where I got it and then he found out it came from Parris.

Q. MOA? What is that?

A. Motor oil additive, made by DuPont.

Q. And you referred to that, you said that was purchased from Mr. Parris?

A. (Nodding affirmatively.)

Q. And did Mr. Hayes think you had purchased it from Mr. Parris?

544 A. Not at the time. He found out later I had.

Q. And did you have a Mr. Hoffman call on you?

A. I did.

Q. Did he ever make any comments about the non-sponsored TBA in your station?

A. Yes.

Q. What did he say?

Mr. Correa: Could we have a time and place fixed?

Mr. Kelaher: Yes, we will do that.

The Witness: Yes. Shortly after Mr. Hoffman came into the territory, which was January 1, 1957, he and I had a discussion about DuPont's antifreeze, because the company always handled Prestone.

Q. What did he say?

A. He said—

Q. By "he" I mean Mr. Hoffman.

A. He asked me what I was doing with DuPont's antifreeze and I told him that you had to have a certain amount of it for those customers that demanded it, but I only purchased it a case at a time, trying to make things as easy as possible.

Q. And do you recall any other incidents with Mr. Hoffman similar to the one you just mentioned?

A. No. But I recall one incident where he came in the office and I had a top coat and a jacket and I was on the way to the cleaners, and he threw them on the floor 545 and I only had laid them down long enough to talk to him because I was driving to the cleaners, on the way to the cleaners, and I saw him in the station and stopped in and carried them in with me. He took them and threw them on the floor.

Q. This is Mr. Hoffman you are referring to?

A. That is right.

Q. Was he doing that as a gag?

A. It might have been a gag to him, but it wasn't a gag to me. He told me to get them out of the front office.

546 Q. Did you receive advertising material from Good-year?

A. I did, not because I ordered it, but because they sent it and billed me for it.

Q. In other words, they sent you advertising material without your request, is that correct?

A. Uh huh.

Q. Are you saying "yes"?

A. They did.

Q. Did Atlantic salesmen or Mr. Parris ever write up tire orders without your request?

A. The salesman did, he sent in oil filters one time without my request and there were so many complaints from other dealers that Mr. Parris called me a day later and after he had sent them and said he understood that was the situation and he wanted to know if I wanted to send them back.

Q. What type oil filters were they? What brand?

A. AC.

Q. Now, with respect to tire orders, did Atlantic salesmen write up tire orders for you?

A. Usually Mr. Parris did.

Q. And would you request certain purchases or how was this done?

A. Usually they'd come in and say "What sizes do you want?" It wasn't how many, they knew if you had a buck why they—and could afford to pay for them they were going to send them in.

547 Mr. Thompson: I move the answer be stricken.

Mr. Kelaher: I think it's perfectly proper, your Honor.

Hearing Examiner Kolb: The motion will be denied.

By Mr. Kelaher:

Q. After the time in March or in 1953 when you discussed the mutual cancellation of lease document with Atlantic representatives, did you ever purchase non-sponsored TBA in large quantities?

A. No, sir.

Q. Why didn't you?

A. I knew better.

Q. When you stated you knew better, would you just explain that in a little detail.

A. Well, if I wanted to stay a dealer I knew I couldn't do it.

Q. You know you'd—

A. In other words, you couldn't do it and get away with it.

Q. After that period when you did purchase non-sponsored TBA I believe you testified the comments were made by Atlantic representatives about it, is that correct?

A. That's correct.

Q. Mr. Matthews, you were an Atlantic lessee dealer from December 10, 1947 until last month, a period of 548 approximately ten years?

A. Correct.

By Mr. Kelaher:

Q. Mr. Matthews, you stated that you left your station May 7, 1957. Would you state whether or why you left your station at that time?

A. Due to my health.

Q. And did you at that time have an inventory on hand?

A. I did, of about stock and equipment \$13,000.

Q. Did Atlantic repurchase any of the inventory?

A. They took most of the inventory and a small part of the equipment but equipment that I was told that I must buy when I went there they left me holding, which I'm still holding, approximately \$3,000 worth of today.

Q. Did you have any Fram oil filters in your inventory?

A. I did, I had about 36 and I still have them.

Q. Would Atlantic repurchase them?

A. No, sir.

549 Q. They were non-sponsored?

A. No, they were sponsored.

Q. They were sponsored when?

A. I bought them from the previous dealer when I went there as dealer merchandise.

Q. Prior to '51?

A. That was in '54 when I bought them, June 1st.

Q. You bought those from Mr. Parris?

A. From Mr. McCafferty when I moved to the station.

Q. I see. But you didn't buy them from Mr. Parris?

A. They had been purchased from him.

Q. They had been?

A. Sure, I assume that they had.

Q. Mr. Matthews, you stated that you received advertising material from Goodyear. Prior thereto did you receive advertising material from Lee?

A. Certainly.

Q. Was there any charge for that advertising?

A. Not to my knowledge, no.

Q. Are you familiar with the gentleman referred to as the phantom customer inspector of Atlantic?

A. No.

Q. Did you ever have your station inspected as far as you know?

A. In regards to what now? Maybe I'm not clear
550 on this when I answered.

Q. With respect to over-all operations?

A. Oh, sure. Sure.

Q. And how often would that occur?

A. Depending on what condition he found the station in.

Q. What do you mean by that?

A. Well, if you got a poor score why he came back oftener.

Q. Did you know when the phantom would be in the station or when the phantom was coming?

A. No.

Q. Do you recall attending Atlantic dealer meeting at Kosticks Restaurant during the summer of 1952?

A. No. It's possible that I did, but I can't just exactly say.

Q. Do you recall attending a meeting of Atlantic dealers at which the subject of a Federal Trade Commission investigation came up?

A. No. Not definitely, no.

In 1953, I think it was in March, there were two men came into my place and conducted an investigation and I remember them at that time, but whether that was the only time I was ever approached from anybody from the Trade Commission.

Q. I'm referring now to a meeting of Atlantic dealers at which the subject of a Federal Trade Commission investigation was mentioned. Do you recall any such meeting?

551 A. I remember one meeting we had when—but I can't say when it was exactly, when we were told that there was an investigation going on and that we were free to buy where we saw fit and so on and so forth; and that's what we were told at the meeting, but then after the meeting when the salesman came around and talked to us individually we were told something else.

Q. What else were you told?

Mr. Correa: May I ask, if your Honor please, that counsel identify who is "we" and who is doing the telling that all of this remains in the midst of anonymity.

By Mr. Kelaher:

Q. At the meeting you referred to who made the statements you have just alluded to?

A. At the meeting?

Q. Yes.

A. Representatives of the company, Atlantic.

Mr. Thompson: Who were they, is your next question.

Mr. Correa: And who was the "we"?

By Mr. Kelaher:

Q. Do you recall the name of the Atlantic representative who made the statement at the meeting?

A. Our salesman at that time was there, Mr. Arnholt was there.

Q. What was his name?

A. I can't tell you who the salesman was at that 552 time because I can't recall exactly when the meeting was.

Q. Did Mr. Arnholt make any statements?

A. The speeches were made and Mr. Arnholt took part.

Q. He took part?

A. Yes, sir.

Q. And you stated at the meeting he stated the substance of what you just mentioned, right?

A. Correct.

Q. After that time—

Mr. Correa: May we have the "we" identified? The witness says "we were told this," there's been no identification of who "we" was.

The Witness: The Atlantic dealers, as you might suppose that's who it would be.

By Mr. Kelaher:

Q. This was meeting of the Atlantic dealers?

A. That's correct.

Q. Now, after the meeting you have reference to you stated Atlantic salesman came in and told you something else, is that right?

A. That's correct.

Q. Now, who was the Atlantic salesman who came into your place?

A. Mr. Way.

Q. What did Mr. Way tell you?

553 Mr. Correa: May we have the time fixed?

By Mr. Kelaher:

Q. Yes. We are trying to.

A. Yes, it was early in 1953.

Q. And what did Mr. Way tell you?

A. That's when Mr. Way and I had the trouble that I just went through, the whole thing, lease, cancellation and so forth.

Q. I see.

Was that when he told you that you should not carry Lee tires?

A. That's right.

Q. At that Atlantic dealer meeting that you have reference to was any mention made of a Federal Trade Commission investigation?

A. I couldn't honestly say.

Mr. Kelaher: No further questions, your Honor.

Mr. Thompson: May we have just a minute?

Hearing Examiner Kolb: Yes.

(Discussion off the record.)

Hearing Examiner Kolb: Do you want to excuse the witness now until tomorrow morning at 9:00 o'clock. Is that it?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: Is that all right with you,
554 Mr. Matthews?

The Witness: Yes, sir.

Hearing Examiner Kolb: All right; tomorrow morning at 9:00 o'clock.

Mr. Dias: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Kelaheer: I would like to call Mr. Hinderscheid to the stand, please.

W. F. HINDERSCHIED was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaheer.

Q. Will you please state your name and home address?

A. W. F. Hinderscheid, 1139 Rock Creek Road, Gladwyne, Pennsylvania.

Q. Are you here in response to a subpoena, Mr. Hinderscheid?

A. Yes, I am.

Q. And what is your position with Lee Tire and Rubber Company?

A. Lee Rubber and Tire Corporation, I'm Vice President in Charge of Sales.

555 Q. You are Vice President in Charge of Sales of Lee Rubber and Tire Corporation, right?

A. That's right.

Q. Now, would you please explain the relationship between Lee Rubber and Tire Corporation and Lee Tire and Rubber Corporation, isn't it?

A. Well, at the present time there isn't any. All there is is Lee Rubber and Tire Corporation. Prior to a year ago, why, Lee Tire and Rubber Company of New York, Inc. was a sales company which was a subsidiary of Lee Rubber and Tire Corporation.

Q. But since that time it has been—

A. (Interposing.) Abolished, the Lee Tire and Rubber Company. Now it's Lee Rubber and Tire Corporation.

Q. For how long a period have you been Vice President in Charge of Sales?

A. November 1, 1948.

Q. Mr. Hinderscheid, prior to about March 1951 Lee had a sales contract with Atlantic Refining Company, is that right?

A. That's right.

Q. And when did that contract first become effective?

A. Well, I can't tell you just when that particular contract became effective because there had been contracts prior to that particular one.

556 Q. Yes. Well, when did the relationship with Atlantic first begin, that's what I'm trying to find out.

A. June 10, 1932.

Q. And that was the first contract entered into with Lee—between Lee and Atlantic, is that correct?

A. That's correct.

Q. And how long did the Lee-Atlantic contract remain in effect? I'm talking about the series of contracts?

A. Well, the series of contracts from June 10, 1932 to March 15, 1951.

Q. And during the period when the Lee-Atlantic contract was in effect what was your form of distribution of Lee tires to the Atlantic market?

A. Our form of distribution to the Atlantic market was we had tires with the Atlantic Refining Company and they distributed to their dealers and service stations.

Q. Did you sell such tires to Atlantic Refining Company?

A. Yes.

Q. Did Lee physically deliver the tires to Atlantic for their warehousing and redistribution?

A. No, we delivered them to the Atlantic warehouses, they did the distribution themselves.

Q. And were there Atlantic warehouses in the entire marketing area in which Atlantic sells petroleum products?

A. I beg your pardon?

557 Q. Did you sell and distribute Lee tires to Atlantic's entire marketing area?

A. Not their entire marketing area; no.

Q. What part of it didn't you sell and distribute Lee tires to?

A. Well, I think they had marketing in the State of Ohio and we didn't have any Lee tires out there with Atlantic.

Q. Aside from that exception you sold and distributed tires to Atlantic in the remainder or the greater portion of their market?

A. I would say we did in a greater portion up until March about 1950.

Q. What happened in March 1950?

A. Well, Atlantic tested out distribution on a different basis in two or three spots between March 1950 and March 1951:

Q. And would you please name those areas?

A. Erie, Pennsylvania; Wilmington, Delaware; Newark, New Jersey.

Q. And were you advised by Atlantic that they were to undergo these so-called tests in those areas?

A. Yes.

Q. And were you also advised by Atlantic to solicit the sale of Lee tires in those test areas?

A. It was agreeable with Atlantic Refining Company for us to do so.

558 Q. I'm referring now to the sales to Atlantic stations.

A. Yes, sir.

Q. Now, Mr. Henderscheid, did you bring with you documents as specified in Specification 1 of the subpoena duces tecum?

A. Well, I had two different letters here—

Hearing Examiner Kolb: You may want to refer to this.
(Handing document to the witness.)

The Witness: Specification I. I have it.

By Mr. Kelaher:

Q. Specification I.

A. I have it here.

Q. Are those documents authentic records of the Lee Tire and Rubber Company?

A. You're taking—

Q. I'm talking about the documents referred to in specification I of the subpoena.

A. Number I?

Q. Yes.

A. Yes.

Q. In addition to Specification I you were also requested to furnish certain data in Specification II. Do you have that material with you?

A. Which is Specification II?

Q. That is attached to the subpoena.

A. Yes, I have that.

Mr. Thompson: If you are showing something to 559 the witness, may counsel see it, Mr. Kelaher?

Mr. Kelaher: Certainly.

The Witness: That is Specification II you ask here for a list of Lee factory branches as of January 1, 1950.

By Mr. Kelaher:

Q. That's right. Do you have such a list?

A. Yes.

Q. And in the second request it asks for a list of Lee factory branches set up in the Atlantic Refining Company marketing areas subsequent to January 1, 1950 together with month and year each branch began operations.

A. I have that.

Q. And do you have the item called for in item 3?

A. I have that.

Q. And the last was for number and names of personnel referred to in items 1 to 19 inclusive of Specification I. List of official positions as of dates of documents.

A. I have that.

Mr. Kelaher: If agreeable to counsel we would like to have the photostatic copies called for in Specification I used in place of the originals.

Mr. Thompson: What do you mean by used?

Mr. Kelaher: For introduction into evidence.

Mr. Thompson: You mean to put into evidence?

Mr. Kelaher: Yes, sir.

560 Mr. Thompson: Well, unless I'm sadly mistaken you are not going to get most of them in evidence. I have no objection to the offer.

Hearing Examiner Kolb: You will make them for identification.

Mr. Kelaher: (To the witness.) May I have the documents?

The Witness: The ones that you sent to me, the photostatic copies? I have them numbered 1 to 19, the way you—numerical order.

Mr. Kelaher: And you also have the answer to specification—

The Witness: I have the answers to Specification II to number 1, number 2, number 3 and number 4.

Mr. Thompson: Unless it's a military secret could we know what Specification II is?

Mr. Kelaher: You certainly may.

Mr. Thompson: Is there a copy counsel could see?

Mr. Correa: I join the request, although I gather this has nothing to do with my client's part of the case.

Hearing Examiner Kolb: Do you want the documents marked for identification by the reporter?

Mr. Kelaher: Just a second, your Honor.

Off the record, your Honor.

572 Mr. Kelaher: I would like to have the next document identified as Commission Exhibit 277. This is a letter dated June 16, 1950 from W. F. Hinderscheid to Mr. S. J. Heideman, Manager, TBA Sales, Atlantic Refining Company, Philadelphia, Pennsylvania.

573 (The document referred to was marked Commission's Exhibit 277 for identification.)

By Mr. Kelaher:

Q. Mr. Hinderscheid, I show you Commission Exhibit 277 and ask you if this is a copy of a letter you sent to Mr. Heideman, dated June 16, 1950 (handing document to the witness).

A. Yes.

Mr. Kelaher: I now offer Commission Exhibit 277 into evidence.

Mr. Correa: I'll have to have a moment, if your Honor please. I have an exceedingly bad photostat which is going to take me a moment or two to read.

Mr. Thompson: Atlantic obviously has no objection to the offer, sir.

Mr. Correa: If your Honor please, on behalf of Goodyear we do object to this document. It is apparent that there has been no foundation laid as against Goodyear; no claim is made as I understand it that Goodyear had any notice of this document or that this document came from the files of Goodyear or has anything to do with Goodyear.

Further on the face of the document it is perfectly apparent from its context as well that it refers wholly and solely to some dealings taking place between Atlantic Refining Company and Firestone Company which is, as to Goodyear, completely res inter alios acta and, there-

574 fore, I object to its being offered in evidence against Goodyear.

Hearing Examiner Kolb: This is a survey made just prior to taking over the Goodyear line?

Mr. Correa: Well, I don't know—

Mr. Kelaher: That's correct, your Honor. There was a test survey with Goodyear in Newark, New Jersey, and with Firestone in Erie, Pennsylvania and Wilmington, Delaware.

Mr. Correa: I see no reference to Goodyear in it and further I don't see even if it did refer to Goodyear how it could possibly be binding on Goodyear and how its introduction into this trial against Goodyear could fail but to commit hopeless prejudice against Goodyear in respect to the trial of the issues posted in the complaint herein.

Hearing Examiner Kolb: Overruled. The document will be received in evidence as Commission Exhibit Number 277.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 277, was received in evidence.)

Mr. Kelaher: I now ask the reporter to identify as Commission Exhibit 278 for identification a tabulation from Mr. D. R. McAvoy, dated 3/7/51, entitled "Monthly Sales to Atlantic Refining accounts in Newark District," to Messrs. Hinderscheid, Pettingell and Segur. That is Item 4 of Specification 1 of Mr. Hinderscheid's subpoena.

575 (The document referred to was marked Commission's Exhibit 278 for identification.)

By Mr. Kelaher:

Q. Mr. Hinderscheid, I hand you Commission Exhibit 278 for identification and ask you to state what that is. (Handing document to the witness.)

A. That is the volume of sales that was done with

Atlantic dealers and stations in the Newark District for the period between June and December inclusive—

Q. Of what year?

A. 1950.

Q. And during that period didn't Atlantic conduct a so-called test program with respect to Goodyear TBA in the Newark district?

A. As far as I know they did.

Q. And wasn't the purpose of this tabulation to inform you and other officials of Lee what sales were actually made to Atlantic refining accounts in the Newark district during that period?

Mr. Correa: I object, if your Honor please, to counsel leading the witness on this kind of thing. Counsel is telling the witness what the purpose of the tabulation was rather than vice versa, and I submit that vice versa is the proper and only proper procedure.

Mr. Kelaher: I'm asking—

576 Hearing Examiner Kolb: I think counsel is correct.

You take a round-about-way of doing it. Go ahead.

By Mr. Kelaher:

Q. In June 1950, was Lee selling Atlantic Refining Company tires for distribution in the Newark, New Jersey district?

A. Yes.

Q. With respect to July 1950, were sales being made by Lee to Atlantic for distribution by Atlantic sales and distributors in the Newark, New Jersey district?

A. No.

Q. And does that same answer apply to August, September, October, November and December of 1950?

A. Yes.

Q. Now, would you please state what the column headed, "Dollar Sales" and underneath that is "Month," and

underneath that is "ACC." Would you please state what they mean?

A. Well, the dollar sales means the volume of business that we did in those particular months which are listed on the left hand side and the ACC means accumulative.

Q. Now, who was the Charles W. Krieg Company?

A. A warehouse distributor that handles our tires in the Newark district.

Q. And what is the reference to New York branch mean?

A. We had a branch in New York City, our own operated.

Q. Does that refer to sales by the New York branch 577 during the months indicated?

A. That's right.

Q. In the Newark district?

A. Not in the Newark district.

Q. It states at the top, "Monthly Sales to the Newark Refining District."

A. That means the Newark district as far as Kreig is concerned and I presume in the Newark district we are figuring certain portions that our New York branch handled there that would come under the marketing area of the Newark district for the Atlantic Refining Company.

Q. In other words, as I understand your answer, this tabulation would relate to sales made by Lee to Atlantic accounts in Atlantic's Newark sales district, is that correct?

A. It would to the extent we were able to figure that's what it covered.

Q. Right. And down at the very bottom of the tabulation there is a heading "1940 AR Co. Sales based on 13.7 percent regional sales (last 6 months, 1949.)" Would you explain what that means, please.

A. Well, that is a figure that we estimated and we had no specific way of knowing, but it was purely an estimate on our part as to the amount of business we received

through Atlantic Refining Company when they were handling Lee tires.

I couldn't say that that figure was correct because, 578 it was more or less an estimate.

Q. I see.

A. We had no way of knowing.

Q. And this column entitled up at the top "Passenger tires" there are four columns, Passenger tires, truck tires, PASS tubes, TR tubes, and underneath that, Month and ACC, under each one. Would you explain what that is, please?

A. Under Pass period tires, that means passenger tires, and the month was the individual month and the ACC is the accumulation, and under Truck tires, why, it's the same as passenger tires, and passenger tubes and truck tubes, we use the same formula on the four of them as we did on the dollar or the monetary value.

Q. And does the number 676, for example, under July, Passenger Tires, represent the unit number of tires sold or dollar volume?

A. 676?

Q. Yes.

A. Unit, passenger tires sold.

Q. Thank you.

Mr. Kelaher: Mr. Examiner, I offer Commission Exhibit 278 in to evidence.

Mr. Thompson: Now, may I inquire the purpose of the offer, sir?

Mr. Kelaher: Yes. The purpose is to show, I think 579 it is self-explanatory, is to show sales made by Lee to Atlantic accounts in Atlantic's Newark district during the period mentioned on the tabulation.

Mr. Thompson: Is it the purpose to compare sales by Lee during certain months of 1949 with certain sales made during the same months of 1950?

Mr. Kelaher: Yes, it is. I think that comparison is made on the tabulation.

Mr. Thompson: Mr. Examiner, I object to the exhibit as completely meaningless because of Mr. Hinderscheid's statement which I was quite sure he would have to make, that the 1949 sales represent 13.76 percent of the regional sales made by Atlantic during 1949 and that was just a guess figure. It is perfectly obvious that instead of guessing 13.76 percent of Atlantic's sales in this particular region if Mr. Hinderscheid's people had guessed 6 percent, the comparison would have been exactly the opposite, the other way. It would have shown an increase in 1950 over 1949 instead of a decrease; unless there is some basis for the 13.76 percent, I submit the whole exhibit does nothing but encumber the record.

Hearing Examiner Kolb: Do you have any remarks on this, Mr. Kelaher?

Mr. Kelaher: Yes, I would like to ask the witness a further question along that line.

580 Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. Mr. Hinderscheid, what was the 13.76 percentage based upon?

Mr. Thompson: If you know, sir, of course.

By Mr. Kelaher:

Q. If you know?

A. The 13.—this sheet shows 13.7 percent, as near as we could figure, why the 13.7 percent was the regional sales of the New York region for the Atlantic Refining Company, as I said before, when we applied it to Newark why it was an estimate on our part and I wouldn't—couldn't verify that this was 13.7 of 14.2 or 12.6.

Q. Was that the best estimate of your—

A. That is the best estimate that we could make.

Q. At the time?

A. At the time, that's right, but I couldn't say that this was an accurate figure.

Q. Was that estimate made for purposes of comparison with the 1950 figures?

A. Well, that's what we did on this sheet, made a comparison.

Q. That was the purpose of it, was it not?

A. That's right.

Q. And why were you forced to make an estimate?

A. We weren't forced to make an estimate.

581 Q. Why did you make an estimate?

A. We wanted to see how we were going from a sales standpoint.

Q. And wasn't it true, that the only alternative you had was to make an estimate because you, prior to that period in 1950, you had sold Lee tires to Atlantic and Atlantic had resold the tires in the Newark area? Isn't that correct?

A. They did, but we had this warehouse distributor of ours at the same time.

Q. So you could tell from your own records the points of distribution to Lee tires going into the Newark district, isn't that correct?

A. The main thing was to see what was necessary for us to increase our sales in that particular area. That was the main reason for it.

Q. And you knew that the distribution points you have mentioned there, you have listed on the tabulation, were the points which distributed Lee tires to Atlantic for resale into the Newark district before the Goodyear TBA test program began in that district. Isn't that correct?

A. I don't quite follow you.

Q. Well, let's put it this way. Prior to about June 1950 you were selling Lee tires to Atlantic, isn't that right?

A. That's right.

Q. And they were being distributed from certain distribution points, isn't that correct, to Atlantic?

582 A. That's correct.

Q. So that Atlantic itself had the record of sales to Atlantic accounts in the Newark district, isn't that correct?

A. I don't know, I presume that they did.

Q. Well, you were selling to Atlantic and not to the dealers?

A. We were selling to Atlantic.

Q. Right. So in order to make a comparison you had to estimate what the sales volume was to the dealers?

A. I might clarify this. We had no way of knowing what Atlantic's sales were in the Newark area because the Newark area as far as Atlantic was concerned, the reports that we received from Atlantic Refining Company not only included Newark but they included Syracuse, Rochester, Buffalo, Binghamton and so on, see, and I knew in that particular area of the whole of New York State that they were running approximately 13.7 or thereabouts and that is the reason I used that particular figure.

Q. So you personally—

A. (Interposing.) No, as far as Newark was concerned, Newark could have been lower than that, or it could have been higher but I had our people use the best figures that we had available. I knew that they weren't accurate.

Mr. Kelaher: Your Honor, I think it is clearly admissible.

583 Hearing Examiner Kolb: Any further objections?

The objection will be overruled, the document will be received in evidence as Commission Exhibit Number 278.

(The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 278, was received in evidence.)

Hearing Examiner Kolb: We will recess for five minutes.

(Thereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: Mr. Examiner, I would like to have the next document identified as Commission Exhibit 279-A through D, which is identified as Item 5 on Specification I on Mr. Hinderscheid's subpoena, it may be described as follows: It is a memorandum and attached three page tabulation from H. K. Paxson to Messrs. Hinderscheid, McCreery and Segur, the first sentence of which reads, and I quote:

"This will complete the record for Atlantic's test districts . . ."

That would be 279-A.

Exhibit 279-B is a tabulation attached thereto identified as follows: "Month by month sales to Atlantic Refining Company accounts in Erie District," signed with the name H. K. Paxson, and the date 3/16/51 thereon.

584 Exhibit 279-C is also appended thereto and it is identified as "Month by Month sales to Atlantic Accounts in Wilmington district." With the name H. K. Paxson and the date 4/2/51 appearing thereon and also the names Messrs. Hinderscheid, Segur and Niedringhaus.

Exhibit 279-B also had the names Messrs. Hinderscheid, McCreery, and Segur thereon.

Exhibit 279-D states "Monthly sales to Atlantic Refining Accounts in Newark district," with the name H. K. Paxson and the date 4/11/51, with the names Messrs. Hinderscheid, Pettingell, and Segur thereon.

(The document referred to was marked Commission's Exhibit 279-A through D inclusive for identification.)

By Mr. Kelaher:

Q. Mr. Hinderscheid, I would like to call your attention to Exhibit for identification 279-A which is the first page of this group (handing document to the witness), and ask you to state what that means?

A. Page 4 here is the same as I just finished testifying on on the Newark—

Q. (Interposing.) That is 279-D that he has reference to now, your Honor, and that is the same as Commission Exhibit 278, correct?

A. That's correct.

Q. Excepting it is for a longer period, isn't that right?

585 A. Yes, it's for two additional months, January and February.

The page 2 covers the number of accounts that had been handling Atlantic products dealers and service stations in the Erie district—

Q. That is CX id. 279-B. Does that run for what period?

A. April of 1950 to February 1951.

Q. And is the data included thereon similar to that you testified to with respect to Commission Exhibit 278?

A. Well, it doesn't have exactly the same information. It does as far as dollar sales are concerned, but it doesn't have the units as 278 had.

Q. Right.

And would you please describe what would be sheet number 3 which is Commission Exhibit for identification 279-C.

A. You have reference now to the Wilmington district on it?

Q. Yes.

A. I don't know what number these are.

Q. To the Wilmington district.

A. Well, that is the same as the Erie—similar information as the Erie and Newark.

Q. And do the 1949 figures contained on these tabulations, 279-B and C reflect the best estimate that could be made by you and your staff with respect to 1949 sales to Atlantic accounts in the areas designated?

586 A. Well, we used the same formula on Wilmington and Erie as we did on the Newark set up.

Mr. Kelaher: Your Honor, I would offer 279-A through D into evidence.

Mr. Correa: If your Honor please, may I ask your leave to ask the witness a question or two on voir dire with respect to a possible objection I have to this exhibit or significant parts thereof?

Hearing Examiner Kolb: Yes.

Voir Dire Examination by Mr. Correa.

Q. Sir, referring to 279-B which is the second page of the exhibit before you, what is the significance of the Erie district in connection with that tabulation?

A. Well, Erie was—279-B?

Q. Yes, it is the second page of the exhibit before you.

A. Well, Erie was a test case the same as Newark and Wilmington was as far as Atlantic was concerned.

Q. Test of what, sir?

A. Of the selling of other than Lee products there, in fact, as far as Erie is concerned, why, it was a testing out of the Firestone.

Q. Firestone?

A. Firestone in Erie.

Q. And I draw your attention to 279-C, being the 587 third page of the exhibit before you and ask you, sir, with respect to that tabulation what is the significance of the Wilmington district?

A. Well, that was a test case on Firestone tires in Wilmington.

Q. That is also concerned with Firestone?

A. That's right.

Mr. Correa: If your Honor please, I object to this exhibit in its totality, because it's already been stated by the witness that 279-D is no more than another copy of 278 already in evidence; so I take it that part of the exhibit in and of itself would furnish no warrant for its admission at this junction.

I object to the admission of 279 with particular reference to 279-B and C because they refer to matters between Atlantic Refining Company and Firestone and do not involve the Goodyear Tire and Rubber Company and the respondent in the proceeding whom I represent. I submit, if your Honor please, that not only are they objectionable on the ground I have stated earlier, *res inter alios acta*, but in addition their admission into this proceeding is prejudicial to the respondent Goodyear and would result in the denial to that respondent to rights to proceed with due process to which it is entitled as well as its rights under the administrative procedure act and other relevant law.

588 Hearing Examiner Kolb: Any objection to me seeing a copy of it?

Mr. Kelaher: No, Mr. Examiner. I would like to correct counsel, he is under the mistaken impression that 279-D is the same as Commission Exhibit 278.

Exhibit 279-D includes the months of January and February 1951 which are not on Commission Exhibit 278 in addition to the same data which is on Commission Exhibit 278.

Mr. Correa: The witness has said they were the same, if your Honor please. Maybe the counsel is right and the witness is wrong.

The Witness: That's right. There are two additional months on it.

Hearing Examiner Kolb: I understood him to say it included a couple of more months.

Mr. Correa: In that event, if your Honor please, I will make my objection specifically to 279-B and C.

Hearing Examiner Kolb: I don't understand, Mr. Hinderseid, you speak of a comparative tabulation. Doesn't this show the number of accounts you sold and the amount of sales in that particular area? Is that it or what does that show?

The Witness: That shows the number of accounts that we sold by months and the dollar volume of business. That is, your Honor, if you have 279—

589 Hearing Examiner Kolb: What connection does that have to do with Firestone?

The Witness: Well, it just so happened that in that particular area, the test case was on Firestone tires, whereas in the Newark test case it was on Goodyear tires.

Hearing Examiner Kolb: Regardless of who you were testing, this shows the sales of Lee in that particular area for the particular months?

The Witness: That's right.

Hearing Examiner Kolb: Any objections, Mr. Thompson?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: All right.

Mr. Thompson: I have a couple of questions on voir dire first, if I may.

Voir Dire Examination by Mr. Thompson.

Q. I didn't understand, sir, referring now to B which is the second page and relates to the Erie district.

A. Yes, sir.

Q. How you got the 26.66 percent of Atlantic's 1949 sales in order to make a comparison with your own 1950 direct sales.

A. Well, where we arrived at the 26.66 percent was that of all of our sales to Atlantic Refining Company, 26.66 per-

cent was made in the Western Pennsylvania Region for Atlantic Refining Company and that is the only information that we had available to determine approximately how many Lee tires Atlantic Refining Company sold in the

Erie district because the Erie district was part of the Western Pennsylvania region. So, with the limited information that we had available why we used the information that we had available and we were assuming that Erie would be about the same as the remainder of Western Pennsylvania, that is I couldn't say that the 26.66 was accurate for Erie, it could be a different figure as far as Erie was concerned, but it was the best figure we had available to use to make a calculation.

Q. But, you do know sir, from the exhibit, if I may pursue that a little further, you do know from your own records that in 1950, during the test period, that is 1950 and in January and February of 1951, your company sold \$94,853.29 in value of tires in the Erie district. Is that correct, sir?

A. That's right.

Q. Then when you make your comparison with the Atlantic Refining Company sales for ten months you derive a figure of \$99,599.39 by using a percentage of 26.66 percent. Is that correct, sir?

A. Yes, sir.

Q. In other words, you allocated to Erie 26.66 percent of the sales which had been made to Atlantic for the Western Pennsylvania region in 1949. Is that correct, sir?

A. I have to think a little on it, it's been seven or eight years since these figures had been made up.

Q. It is very confusing to me, sir, that is why I'm asking you these questions.

May I restate the same question in perhaps a more simple manner?

A. Yes.

Q. You were assuming for purposes of exhibit 279-B that in 1949, 26.66 percent of the sales made to Atlantic's Western Pennsylvania region had been for dealers in the Erie district. Is that correct?

A. That's right.

Q. Did you have a basis for that 26.66 percent figure, sir? Do you know why—

A. (Interposing.) At this time I can't tell you why the 26.66 percent—

Q. (Interposing.) Then when you come to Exhibit 279-C which refers to the Wilmington district you used a 12 percent figure, is that correct?

A. That's right. There it is.

Q. And was that estimate also made by you for purposes of determining what the Wilmington district sales of Atlantic Refining Company had been in 1949 as compared with a much larger region?

A. I don't think the 12 percent or the 26.66 percent that I arrived at those figures, that is the people that 592 worked these reports up, why, arrived at those figures and they were the best figures that they had available to work with. I didn't work up the figures at all.

Q. And you are not presently able to explain what method they used for computing it?

A. No.

Mr. Thompson: I object, sir, simply because I think all of these exhibits ought to be better authenticated than Mr. Hinderscheid is able to do. I am not referring any criticism of him in his position, he wouldn't know how these things were made up.

By Mr. Kelaher:

Q. Mr. Hinderscheid, who was Mr. H. K. Paxson whose name appears on those documents?

A. At that time, when those reports were made up, Mr.

Paxson was manager of our marketing research department and I might explain that on the one there for New Jersey or Newark there, why, we had Mr. McAvoy who had been previously manager of Marketing Research, Mr. McAvoy left the company and Mr. Paxson took over at that time as manager of Marketing Research.

Q. Mr. Hinderscheid, were these estimates made by men in the Lee organization qualified to make such estimates?

A. Well, I thought they were qualified.

Q. Thank you.

593 A. I don't know if they were qualified or not, but I thought they were.

Q. Well, the manager of the Market Research would have certain skills along those lines, would he not?

A. I imagine he had certain reasons to make a 26.66 instead of some other figure.

Q. Thank you.

Mr. Thompson: I think, sir, that this sort of tabulation is obviously proper for inter-company information but when you come to a law suit where an issue is whether the Lee company did or did not lose sales in a particular period of time, I think it's entirely too vague to be worthy of credibility and therefore of admissibility.

Mr. Kelaher: Mr. Examiner, I would like to call your attention to the fact that the same considerations are present here as were present when we discussed Commission Exhibit 278 which was admitted into evidence.

Hearing Examiner Kolb: The objection will be overruled, the document will be received in evidence as Commission's Exhibit 279-A to D.

(The document referred to, heretofore marked COMMISSION EXHIBIT 279-A through D inclusive, was received in evidence.)

Mr. Correa: Does that apply, your Honor, to our objection?

594 Hearing Examiner Kolb: I am passing on all objections made before me at the time.

Mr. Correa: Do these two parts of the exhibit having to do with another company not a respondent here—we are expected to defend as to what Firestone did, if your Honor please, or didn't do?

Hearing Examiner Kolb: I made my ruling.

Mr. Kelaher: Your Honor, I would like to have the document marked as Commission Exhibit for identification 280 which is a memorandum which is titled "Memorandum for Lee operating staff dated February 16, 1951 from Mr. A. A. Garthwaite, President, to Messrs. Brasaemle, Garthwaite, Jr., Hinderscheid, Leach, Nellen and Pouchot.

(The document referred to was marked Commission's Exhibit 280 for identification.)

Mr. Kelaher: It is also noted thereon that carbon copies went to Messrs. Conway, Dollison, Ikirt, Ingersoll.

By Mr. Kelaher:

Q. Mr. Hinderscheid, I show you Commission Exhibit for Identification 280 and ask you to state if that is an authentic copy of the memorandum from Mr. Garthwaite to you and others?

A. That's right.

Q. And where the other gentlemen named on the document members of the Lee Organization?

A. Lee Rubber and Tire Corporation, yes.

595 Mr. Kelaher: Your Honor, I offer Commission's exhibit for identification 280 into evidence.

Mr. Correa: May I inquire for what purpose, if your Honor please?

Mr. Kelaher: Your Honor, this is a document which is dated February 16, 1951, from the President of Lee to Lee operating personnel concerning the Lee-Atlantic contract, which expired on or about that date.

Hearing Examiner Kolb: Have you another copy here I could see?

Mr. Thompson: If anyone can read that document, I might object to it.

Mr. Correa: That is why I asked the purpose, because I can't read it.

Hearing Examiner Kolb: Any objection?

Mr. Correa: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Commission's exhibit 280.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 280 for identification, was received in evidence.)

Mr. Kelaher: Your Honor, I would like to have marked as Commission's exhibit for identification 281-A and -B a two-page memorandum dated February 19, 1951 entitled "Sales Meeting," and the first sentence of which reads 596 as follows: "1. Atlantic Refining Company Contract cancelled effective March 1, 1951".

(The document referred to above was marked Commission's exhibit 281-A, -B for identification.)

By Mr. Kelaher:

Q. Mr. Hinderscheid, I hand you Commission's exhibit for identification 281-A and -B and ask you to describe what it is, please?

A. This was an agenda for a sales meeting called for February 19, 1951 to advise our sales staff of the cancellation of the contract that we had with Atlantic Refining Company.

Q. Where was the meeting held?

A. Why, this meeting was held in Conshohocken, at our general office.

Q. And were you present at the meeting?

A. I was.

Mr. Kelaher: I offer Commission's Exhibit 281-A and -B in evidence.

Hearing Examiner Kolb: Any objection?

Mr. Correa: If your Honor please, the document is not, I suppose, in any sense prejudicial, but I am constrained as a member of the Bar to object to loading the record with this type of trivia. This is an agenda of a sales meeting; presumably the meeting took place; presumably they followed the agenda; maybe they didn't, who knows.

But what earthly use this can have toward the advancement of the determination of the issues of fact in this case, I must confess escapes me entirely and I can't sit here and let the record be loaded with inconsequential material of this character and I object to it on that ground.

Mr. Kelaher: Your Honor, I would like to call your attention to the date, February 19, 1951, which was the month during which Lee's contract with Atlantic, which had been in effect from 1932 on, was terminated.

Mr. Correa: I don't deny for a moment it is a significant time, your Honor, in terms of the facts of the case. All I am saying is that the probative value of this piece of paper is nil and we are just loading the record.

Mr. Thompson: If your Honor please, I hate to disagree with my friend, but I think this paper, at least in one respect, has great significance and great probative value.

Now I particularly call your attention to item 2 c "Atlantic dealers and distributors are free to handle Lee tires and other accessories once bought through Atlantic." That is a fact we would almost admit in this case, Mr. Correa.

Mr. Correa: That is conceded. I don't think there is any doubt about that. It is cumulative.

Hearing Examiner Kolb: The objection will be over-

ruled. The document is received in evidence as Commission's exhibit 281-A and -B.

598 (The document referred to, heretofore marked COMMISSION'S EXHIBIT 281-A and -B for identification, was received in evidence.)

Mr. Keläher: Your Honor, I would like to have marked for identification as Commission's exhibit 282-A and -B the letter from Mr. Hinderscheid, W. F. Hinderscheid, Vice President in Charge of Sales, to all Atlantic dealers, dated February 20, 1951, with a postcard attached, identified as Commission's exhibit 282-B.

(The document referred to was marked Commission's exhibit 282-A and -B for identification.)

By Mr. Kelaher:

Q. Mr. Hinderscheid, is this your signature appearing on Commission's Exhibit 282-A?

A. Is that my signature?

Q. Yes.

A. No, that isn't my signature.

Q. Is that your name?

A. Yes, but it is not my signature.

Q. Did someone sign it for you?

A. They did.

Q. With your permission?

A. Yes, with my permission, but it is not my signature.

Mr. Kelaher: I now offer Commission's exhibit 282-A and -B into evidence.

599 Hearing Examiner Kolb: Any objection?

Mr. Correa: No objection.

Mr. Thompson: No objection.

Hearing Examiner Kolb: It will be received in evidence as Commission's exhibit 282-A and -B.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 282-A and -B for identification, was received in evidence.)

600 Mr. Kelaher: Your Honor, I would like to have marked for identification as Commission's exhibit 283 A through C inclusive, a Lee Tire and Rubber Company of New York Memorandum dated February 21, 1951 from A. G. P. Segur to seven branches: Cincinnati, Columbus, Louisville, and others; and an attached two-page Lee Tire and Rubber Company of New York memorandum dated February 21, 1951 from Mr. Segur addressed to all branch managers.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record. Go ahead with the identification of all the exhibits at one time.

Mr. Kelaher: For clarification, concerning Commission's exhibit 283 A-C, the covering letter is 283-A, and the copy of the letter referred to therein is identified as Commission's exhibit 283-B and -C.

For identification as Commission's exhibit 284-A and -B, a two-page Lee Tire and Rubber Company of New York, Inc. memorandum dated February 26, 1951 from H. L. Pettingell to Messrs. Iringer, Polson, Copeland, and Thompson.

For identification as Commission's Exhibit 285, a memorandum dated March 5, 1951 from E. W. McCreery to Messrs. Fiffick, McGinn, Bartley and Simpson, the first line of which reads as follows: "In analyzing salesmen's reports" and so forth.

601 For identification as Commission's exhibit 286-A and -B, a Lee Tire and Rubber Company of New York, Inc., memorandum dated March 5, 1951 from A. G. P. Segur to "Regional Sales Managers and Branch Managers," which memorandum is to be identified as exhibit 286-A; and attached thereto a copy of the Atlantic Refining Company letter dated March 1, 1951 from D. T. Colley,

entitled, "A statement of Atlantic's T. B. A. Policy," to be identified as Commission's exhibit 286-B.

For identification as Commission's exhibit 287, a Lee Tire and Rubber Company of New York, Inc. memorandum dated March 16, 1951 from E. W. McCreery to Messrs. Simpson, McGinn, McPeak, Allen, et al.

For identification as Commission's exhibit 288-A through D inclusive, a two-page Lee Tire and Rubber Company of New York, Inc. memorandum dated August 3, 1951 from W. F. Hinderscheid to "Regional Managers and Branch Managers," marked "Confidential"; and attached thereto a copy of a letter dated July 31, 1951 from Mr. Hinderscheid to Mr. Dwight Colley, Vice President in charge of sales, The Atlantic Refining Company, Philadelphia, Pennsylvania, to be identified as Commission's exhibit 288-C; and also attached thereto a copy of a reply letter dated August 2, 1951 from Mr. Colley to Mr. Hinderscheid to be identified as Commission's exhibit 288-D:

To be identified as Commission's exhibit 289 for identification, a Lee Tire and Rubber Company of New York, Inc. memorandum dated August 6, 1951, from W. F. Hinderscheid to "Regional Managers and Branch Managers," the first sentence of which reads as follows: "Since writing the attached letter", and so forth.

To be identified as Commission's exhibit 290, A through I inclusive, a Lee Tire and Rubber Company of New York, Inc. memorandum dated August 6, 1951, one page, to be identified as Commission's exhibit 290-A-I, to Messrs. Foraker, McCreery, Miedringhaus, Pettingell, and Riddick; and attached thereto an eight page tabulation containing sales data as to AR and DAR accounts for the months of March, April, May and June 1951 by regions.

Hearing Examiner Kolb: That shows on the face of the document, doesn't it?

Mr. Kelaher: Yes, sir. All right.

For identification as Commission's exhibit 291, A through C, a Lee Tire and Rubber Company of New York, Inc. memorandum dated October 23, 1951 from H. K. Paxson to Messrs. Hinderscheid, Segur, and Anthony, entitled "Re AR and DAR accounts," and attached thereto a two-page tabulation entitled "August 1951 AR and DAR Accounts," by H. K. Paxson dated 10-18-51.

For identification as Commission's exhibit 292, A through C, a Lee Tire and Rubber Company of New York, Inc. memorandum dated November 28, 1951 from H. K. 603 Paxson to Messrs. Hinderscheid, Segur, and Anthony, entitled "Re AR and DAR accounts," and attached thereto a two-page tabulation entitled "September 1951 AR and DAR Accounts," by H. K. Paxson, dated 11-28-51.

To be identified as Commission's exhibit 293 A and B, a letter dated August 14, 1952 from E. W. M., Vice President, to B. M. Boor, Atlantic Refining Company, Pittsburgh, Pennsylvania, and an attached memorandum dated August 12, 1952 from Erie, Pennsylvania branch to Mr. E. W. McCreery, entitled "Atlantic Refining Co. Leased Stations."

Hearing Examiner Kolb: Is this a letter to or from Atlantic?

Mr. Kelaher: That is a letter from Lee to Atlantic. I would like to ask the witness if the initials E. W. M., Vice President, refer to E. W. McCreery?

The Witness: It does.

Mr. Kelaher: Thank you.

The documents referred to above were marked Commission's exhibits 283-A, -B, -C; 284-A, -B; 285; 286-A, -B; 287; 288-A, -B, -C, -D; 289; 290-A, -B, -C, -D, -E, -F, -G, -H, -I; 291-A, -B, -C; 292-A, -B, -C, and 293-A, -B for identification.)

Mr. Kelaher: Your Honor, I would like to ask the wit-

ness a question with respect to one designation in certain of these documents before I offer them into evidence.

604 By Mr. Kelaher:

Mr. Hinderscheid, there are several tabulations here beginning with Commission's exhibit for identification 290, and on through several others, in which reference is made to AR accounts and DAR accounts. I would like you to explain what those symbols mean.

A. Well, the AR accounts means those accounts that are handling Atlantic or were handling Atlantic Refining Company products.

Q. They are Atlantic outlets, is that right?

A. To the best of our knowledge, they were. And the DAR accounts are other accounts that we kept a record of that our salesmen were out trying to get a contract for or sign up to replace some of these Atlantic refining company accounts that we know wouldn't buy other brands of tires.

Q. Well, my understanding then is that you mean the DAR accounts refer to non-Atlantic service stations?

A. That is right. But it was due to the cancellation of the Atlantic Refining Company contract, but they had nothing to do whatsoever with Atlantic Refining Company; they were other accounts we signed up and started to sell.

Mr. Kelaher: Mr. Examiner, I would like to offer these documents into evidence, beginning with 283 A through C inclusive through 293-A through B, with the exception of the portions of those which appear in certain of the 605 documents beginning I believe with Commission's exhibit 290 A through I, where reference is made to DAR accounts. We are offering only the portions of those tabulations which refer to AR accounts, which reflect sales to Atlantic Refining outlets.

Hearing Examiner Kolb: Any objection?

Mr. Thompson: I am in a fair state of confusion with respect to the exhibits that have AR and DAR accounts on them, and I would like to look at them before I answer. I can answer as to the rest of them very quickly. I think those exhibits are 290 and 291 and 292.

Hearing Examiner Kolb: What do the initials DAR stand for?

The Witness: Those were accounts that we, after cancellation of Atlantic Refining Company contract, that we were able to go out and sign up immediately.

Hearing Examiner Kolb: They were still Atlantic Refining Company?

The Witness: No, they weren't handling any Atlantic products; they were just other accounts.

Mr. Kelaher: In the same area?

The Witness: Yes, approximately the same area.

Hearing Examiner Kolb: Then the AR doesn't refer to Atlantic Refining?

The Witness: It was just a designation as far as we were concerned.

606 Mr. Thompson: May I ask a question or two on Voir Dire?

Hearing Examiner Kolb: All right.

Voir Dire Examination by Mr. Thompson.

Q. I wonder whether you are not mistaken inadvertently about that. I am showing you one of those exhibits, and I refer you to the AR accounts and the column referring to DAR accounts, and I ask you whether the DAR accounts weren't Atlantic Refining Company Distributors?

A. No, they weren't.

Q. Are you sure of that?

A. I am positive.

By Mr. Correa:

Q. Sir, is the DAR, does that stand for anything, does that stand for any words beginning with the letters DAR respectively?

A. I will tell you what this stands for as far as words are concerned. Due to Atlantic Refining Company cancellation of the contract.

Q. Then these are former Atlantic Refining Company—

A. (Interposing.) It had nothing to do with Atlantic Refining Company whatsoever.

Mr. Thompson: Your Honor, in view of that—the hour is getting very late—I wonder if we might have a chance to review these particular exhibits, in view of the witness' explanation because it puts them in an entirely new light so far as I am concerned. I had thought, in reviewing this before, and trying to understand and analyze them, that DAR meant distributor of Atlantic Refining Company, and now I have to take time to try to understand them in the light of Mr. Hinderscheid's explanation. So, could we reserve any objection we might have to these three exhibits until in the morning?

Hearing Examiner Kolb: Is it something Mr. Hinderscheid might have to explain, He wasn't to be here tomorrow.

Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Correa: May I ask the status of those documents?

Hearing Examiner Kolb: They are just identified. I thought Mr. Thompson wanted to wait until tomorrow morning to have them offered.

Mr. Thompson: That was only the three.

Mr. Correa: I join him in the objection to those three, but I have no objection to the others.

Mr. Thompson: I have an objection, sir, to 289.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

(Witness temporarily excused.)

608 Hearing Examiner Kolb: Let's go through them in an orderly fashion. There is no objection to 283 A through C, is that right?

(No response.)

And there is no objection to 284-A and -B?

(No response.)

They will be received in evidence.

(The documents referred to, heretofore marked COMMISSION'S EXHIBITS 283-A, -B, -C; and 284-A and -B, were received in evidence.)

Hearing Examiner Kolb: Exhibit 285, is there objection?

(No response.)

It will be received in evidence.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 285 was received in evidence.)

Hearing Examiner Kolb: Exhibit 286-A and B?

(No response.)

It will be received in evidence.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 286-A, and -B for identification was received in evidence.)

Hearing Examiner Kolb: 287?

(No response.)

It will be received in evidence.

609 (The document referred to, heretofore marked COMMISSION'S EXHIBIT 287 for identification, was received in evidence.)

Hearing Examiner Kolb: Exhibit 288, do you have objection to that?

Mr. Thompson: No objection to 288.

Hearing Examiner Kolb: It will be received in evidence.

(The document referred to, heretofore marked COMMISSION'S EXHIBITS 288-A, -B, -C, -D for identification was received in evidence.)

Hearing Examiner Kolb: Exhibit 289?

Mr. Thompson: Yes, sir, I have an objection to that. It is simply based on the ground that in that document it is apparent from the face of it that Mr. Hinderscheid attempted to state not the policy of the Lee Company, which of course he could do, but the policy of the Atlantic Refining and Goodyear Company.

Hearing Examiner Kolb: May I see the document?

Mr. Thompson: (Reading to the Examiner.)

Mr. Kelaher: Your Honor, Commission's Exhibit 289 is a follow-up to Commission's Exhibit 288 A through D, which is already in evidence.

Hearing Examiner Kolb: Have you completed your objection, Mr. Thompson?

610 Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: It will be overruled, and the document will be received in evidence.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 289 for identification, was received in evidence.)

Hearing Examiner Kolb: Exhibits 290, 291, and 292 it is agreed that we hold them until tomorrow.

How about 293?

Mr. Thompson: I have no objection. And may I comment here, Mr. Kelaher, the reply to that letter I have here and we might save time by putting that in as a Commission exhibit, if you like, or otherwise we will put it in later.

Hearing Examiner Kolb: Let's hold that until tomorrow morning.

Mr. Correa: Mr. Examiner, I have an objection to 293-A and B, because it is apparent on the face of 293-B that both exhibits refer to an incident which has nothing to do with the respondent Goodyear; it involved apparently something arising in the area of the Firestone.

Hearing Examiner Kolb: May I see that?

Mr. Correa: (Handing to Examiner.)

Hearing Examiner Kolb: Your objection is to the attachment?

Mr. Correa: To both, because the other doesn't have any point except with the attachment, and the whole 611 incident around which both evolved makes it clear it had nothing to do with the respondent Goodyear.

Hearing Examiner Kolb: You have no objection, Mr. Thompson?

Mr. Thompson: No, sir.

Hearing Examiner Kolb: The document will be received in evidence as to Atlantic and received subject to motion to strike on the part of Goodyear.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 293-A and -B for identification, was received in evidence.)

613 JAMES MATTHEWS, resumed the stand and testified further as follows:

Cross-Examination by Mr. Thompson.

Q. Mr. Matthews, I am going to show you one of the Commission's exhibits in this case, identified as CX-150. This isn't the original exhibit but I won't bother to get it because I have a photostat.

Mr. Kelaher, I am going to use a photostat instead of the one that is in evidence, if I may, of this letter.

Mr. Kelaher: Certainly.

By Mr. Thompson:

Q. And I will ask you whether you recall receiving a letter addressed to you in the form of Exhibit CX-150 dated March 1, 1951, signed by Dwight T. Colley, Vice President of Atlantic Refining? (Handing document to the witness.)

A. So?

Mr. Kelaher: I believe—

Mr. Thompson: There is a question.

614 Mr. Kelaher: Would you state the question; I don't know whether he knows there is a question pending.

Mr. Thompson: Let's have it read.

(The reporter read the following question:

“Question: I will ask you whether you recall receiving a letter addressed to you in the form of Exhibit CX-150 dated March 1, 1951, signed by Dwight T. Colley, Vice President of Atlantic Refining?”)

The Witness: I do.

By Mr. Thompson:

Q. I am going to now show you Commission's Exhibit CX-206, dated August 28, 1952, also signed by Mr. Colley, called “A Restatement of Atlantic's TBA Policy,” and ask you whether you recall receiving a letter in that form addressed to you? (Handing document to the witness.)

A. I do.

Q. And I now show you Commission's Exhibit CX-207 addressed by Mr. J. O. Estlow on June 24, 1955, to all Atlantic dealers and ask you whether you recall receiving that letter? (Handing document to the witness.)

Mr. Kelaher: I beg your pardon, is that an exhibit and what is the number on that?

Hearing Examiner Kolb: 207

A. That one I don't recall.

615 By Mr. Thompson:

Q. I am going to ask you about a fourth communication sent to all Atlantic dealers and show you Exhibit 282, I guess, Mr. Kelaher, that is CX-282, one of the exhibits you offered yesterday?

Mr. Kelaher: Yes, sir.

By Mr. Thompson:

Q. Signed by Mr. Hinderschied, of the Lee Tire & Rubber Company dated February 20, 1951, and ask you whether you as a former Lee dealer recall receiving that letter? (Handing document to the witness.)

A. I don't recall receiving that letter or the post card attached.

Q. If you did receive the letter you did not send back the post card attached?

Mr. Kelaher: Objection, your Honor, he doesn't recall receiving the letter.

Hearing Examiner Kolb: The objection is overruled, cross-examination.

A. I don't recall receiving the letter.

By Mr. Thompson:

Q. Then my question was if you did receive the letter you didn't send back the post card?

A. I didn't answer that part.

Q. What is the answer?

616 A. Well, if I didn't recall receiving the letter naturally I wouldn't send back the card.

Q. In any event to the best of your recollection you did not send back a card to Lee saying that you wanted to deal in Lee tires?

A. I didn't receive the letter.

Q. You say you did not receive the letter?

A. To the best of my knowledge I didn't receive the letter.

Q. You were a fairly regular attendant at Atlantic dealer meetings, weren't you?

A. Correct.

Q. You referred to one yesterday held in the spring of 1951 at which you were told that the Goodyear TBA program was for you to accept or reject?

A. Correct.

Q. On how many subsequent occasions were similar statements made at dealer meetings? Quite frequently, were they not?

A. That's the only one in particular that I recall.

Q. And that was in the early part of '51?

A. Right.

Q. Well, you testified yesterday to another one which you said was in '52 and as I recall your testimony you said that shortly after that meeting in spite of those assertions by the Atlantic people, Mr. Way and Mr. Arnholt came out and told you the contrary. Was that a correct statement yesterday?

617 A. It was.

Q. So, there was more than one meeting at which you were told—

A. I said I did not recall at the present time.

Q. Do you now recall both of them?

A. The meeting at the beginning when we were told about this new TBA program, we were told at that time and we were told once at a later date.

Q. And that was in '52 or '53?

A. I would say that it was either late in '52 or early in '53. I can't be positively sure which.

Q. Fall of '52, perhaps?

A. I can't be sure.

Q. Called a "Football meeting?"

A. I can't be sure.

Q. Are you sure you went to that?

A. I went to all of them except one meeting that I remember missing.

Q. At every such meeting were not similar statements about no forcing made by the Atlantic representatives?

A. I don't recall it. I wouldn't say at every meeting; no.

Q. But you did receive two letters to that effect from Mr. Colley that you have already testified to?

A. I received two letters, the third letter I don't recall receiving.

618 Q. Now, after Atlantic adopted the Goodyear plan were you asked by Lee to sign an associate dealer franchise for Lee tires?

A. It's possible but I don't recall it.

Q. Did you sign such a franchise?

A. Well, if I don't recall it, I don't recall signing it.

Q. After March of '51 from whom did you buy Lee tires?

A. From their branch in Bryn Mawr.

Q. The branch in Bryn Mawr?

A. Yes.

Q. At that time you were in Yeadon?

A. Yes, sir.

Q. With whom in the Bryn Mawr branch did you deal?

A. Mr. Deemer.

Q. Did Mr. Way and Mr. Arnholt tell you some time in 1953 to discontinue selling Lee tires?

A. Either later in the fall of '52 or early in the spring of '53.

Q. Now, precisely who said what?

A. Mr. Way told me to get rid of the Lee tires or else they would get rid of me, to get them off of the racks and get them out of the station.

Q. And that was the entire conversation?

A. That was the heart of the conversation.

Q. Was this at the time Mr. Way suggested you
619 sign a mutual cancellation of your lease?

A. That was about two weeks prior to the time.

Q. Now, you say that was part of the conversation,
was that the entire conversation and where was it held,
was it held at your station?

A. Yes, sir.

Q. What was the entire conversation?

A. That's the main part of the conversation I remem-
ber.

Q. You don't now recall any other part of the conver-
sation?

A. Nothing definite; no.

Q. Did you report to Lee what you say Mr. Way said?

A. I did not.

Q. Did you report to Mr. Colley?

A. I did not.

Q. Mr. Estlow?

A. No, sir.

Q. Well—

A. I didn't know anything about this report letter that
you are talking about or I most certainly would have.
That's the third letter you showed me there.

Q. You are now referring to a letter which was written
in 1955 which, of course, you didn't know anything about?

A. No, I didn't know anything about.

Q. This was in 1953, did you say?

A. That's what I say, I don't know anything about
that.

620 Q. But you had received two prior letters from Mr.
Colley at the time of this alleged conversation with
Mr. Way, had you not?

A. I don't know—I didn't look at the dates on the
letters.

Q. You can refresh your recollection by looking at

them again. One was in '52, one was in '51. (Showing documents to the witness.)

A. That would be before then, sure.

Q. Yes. So that you had already received those letters from Mr. Colley when Mr. Way is supposed to have said these things to you, correct?

A. Mr. Way did say them; there's no supposition about it.

Q. Well, we'll find that out later.

Now, you said something about a Lee sign having been taken down at your premises when you were away?

A. A sign from the windows were taken out, the decals.

Q. And how about the Lee tire sign on the station, was that taken down?

A. There wasn't any Lee tire sign at my Yeadon station, there was a Lee tire sign at the Darby station.

Q. And when you moved in 1949 from Darby to Yeadon there was no Lee sign on your station?

A. There was a Lee sign in Darby, yes, in '49, but there was no Lee sign in Yeadon.

Q. Was there a Lee decal?

621 A. Yes.

Q. I beg your pardon?

A. Yes.

Q. What is a decal?

A. It's a sign that's put on the inside of glass.

Q. Just pasted on the window?

A. That's right.

Q. And you say that was taken down?

A. That's right.

Q. At your Yeadon station?

A. Yes.

Q. Do you know by whom?

A. No, I wasn't there when it was taken down.

Q. You weren't there a lot of the time in those days, were you, Mr. Matthews?

A. I don't think that enters into it at all.

Q. We'll see whether it does. I would like you to answer my question.

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Overruled.

By Mr. Thompson:

Q. Is that true or false?

A. I don't have to answer—

Mr. Kelaher: Is what, your Honor?

Hearing Examiner Kolb: What is the question?

622 Mr. Thompson: The question is, "You were not at the station a lot of the time during those days, were you?"

The Witness: I wasn't at the station twenty-four hours. I worked a shift.

By Mr. Thompson:

Q. In fact, you were away from the station a great deal, weren't you?

There's a question.

A. Describe what you mean by "a great deal".

Q. I'm asking the questions, Mr. Matthews.

A. All right, make yourself more specific then.

Q. You can take your orders from the Examiner.

Hearing Examiner Kolb: Answer the questions as best you can, Mr. Matthews.

The Witness: I don't understand what he means by "a great deal," does he mean months, a year, or week? I took a vacation which I think everyone is entitled to.

Hearing Examiner Kolb: Answer the question. Were you there except for the vacation?

Mr. Kelaher: Your Honor, I think he's entitled to have a more specific question. A great deal of time means

a lot of things to a lot of people. I think it should be specified with respect to hours, days, months, etc.

Hearing Examiner Kolb: Ask another question.

Mr. Thompson: I'll come back to it if I may.

623 By Mr. Thompson:

Q. About this Lee decal, did you tell the Lee distributor in Bryn Mawr that the decal had been taken down?

A. I did not.

Q. Why not?

A. Pardon?

Q. Why not?

A. I didn't feel it was necessary.

Q. Did you ask for another one?

A. I did not.

Q. Why not?

A. I had them in stock.

Q. You had them in stock?

A. I did.

Q. Did you testify yesterday that it wasn't put back again because you only had one?

A. No, I didn't.

Q. Well, your testimony will speak for itself.

A. I said I didn't put it back, but I didn't say that I only had one.

Q. Why didn't you put it back?

Mr. Kelaher: Objection, your Honor, to—he stated it's a fact he didn't put it back.

Mr. Thompson: I said "Why didn't you put it back?"

The Witness: I didn't get to it until they come back 624 and put more Goodyear decals up.

By Mr. Thompson:

Q. Now, you said that about two weeks after Mr. Way told you to get the Lee tires out of your station he came

out with a proposed mutual cancellation of your lease, is that correct?

A. I would assume that it was approximately that time. After all, I didn't write it down and you're talking about something that happened five years ago.

Q. Now, that would make that incident the latter part of '52 or early part of '53, would it not?

A. It was the incident because my lease expired in May or June of '53, thereabouts, and it was, I would roughly guess, four to six months before my lease was due to expire.

Q. That would place it in the early part of '53?

A. Somewhere thereabouts.

Q. Now, you had been promoted from Darby to Yeadon by Atlantic, had you not?

A. I wouldn't call it a promotion.

Mr. Kelaher: Objection—all right.

By Mr. Thompson:

Q. Well, you had been moved to a more desirable station from Darby to Yeadon, hadn't you?

A. I wouldn't say it was.

Q. You hadn't been doing very well at Yeadon up to the early part of '53, had you?

A. I wouldn't say that.

625 Q. Gasoline volumes falling off?

A. Due to lack of support from the company and price condition; yes, sir.

Q. What do you mean by "lack of support from the company"?

A. They set up distress areas and I was left out.

Q. By "distress areas" you mean assistance to dealers on price?

A. Correct.

Q. Was that the reason your volume was falling off or

was it because you were away from the station a great deal of the time?

A. I would say that it was due to distress areas being set up around me and I was left out.

Q. You could, of course, say that but I have some other questions I want to ask you on that score.

At that time were you not involved in a trucking business?

A. To some extent, but I had drivers, I wasn't doing my own driving.

Q. Didn't you operate a fleet of trucks?

A. I operated one and for a short time two, if you would call that a fleet.

Q. And you drove one of them yourself at night, didn't you?

A. No, I didn't.

Q. Not at all?

626 A. There was occasions when I drove a truck, but I wasn't a steady truck driver; no.

Q. When Mr. Way come out to see you and suggested a cancellation of your lease, did he not say to you that your outside interests were interfering with the operation of the station?

A. He did not.

Q. Did he say to you you were spending so much time on your trucking business that you were not adequately handling this station?

A. He did not.

Q. Did he say to you that one of your problems was that you drove a truck at night and were unable to be at the station the next day?

A. He did not.

Q. Did he ask you to discontinue the trucking business?

A. He did not.

Q. He made no mention of the trucking situation at all?

A. No, sir; not to my recollection he didn't.

Q. And on that occasion you said yesterday that he talked to you for three hours?

A. Correct.

Q. And you have summed that three hour conversation up—

A. Strictly an argument whether or not I would sign a mutual.

Q. And you argued about that for three hours?

A. Correct.

627 Q. And there was no reference to your outside activities and outside interests?

A. Not to my recollection; no.

Q. At that conversation did Mr. Way refer to the fact that you were in the Christmas tree business?

Mr. Kelaher: Which business is this?

Mr. Thompson: This is just another one; I'm coming to some more.

Mr. Kelaher: I just didn't understand you.

Mr. Thompson: Be patient, Mr. Kelaher.

Mr. Kelaher: I didn't understand you.

Mr. Thompson: Christmas trees.

Mr. Kelaher: Thank you.

By Mr. Thompson:

Q. Was that discussed?

A. No, sir. Furthermore, there was never a Christmas tree sold from the station; I never had a Christmas tree at that time to market, and as far as owning a farm I do own a farm but I have never done two hours work on the farm myself. So, what the Christmas tree business has to do with it is nothing.

Q. It diverted your attention from the station; you spent a great deal of time up there, did you not?

A. I did not. I went home to see my people once in a while; they live in the neighborhood. Yes.

Q. And shortly after—

628 A. Which I certainly think I'm entitled to.

Q. During this conversation with Mr. Way did he ask you to accept his counsel and advice about how to run a station profitably?

A. Yes, if I would go one hundred percent Atlantic on TBA and so forth.

Q. That is scarcely an answer to my question and I move that the response be stricken.

A. I answered to the best of my ability.

Hearing Examiner Kolb: The motion to strike will be denied.

By Mr. Thompson:

Q. Did he ask you to cooperate with him in trying to make this a top Atlantic station?

A. I told him if he would let me go to the end of my lease he could do as he saw fit.

Q. Did the station's volume and performance after this discussion with Mr. Way begin to improve?

A. I would not say yes or no volumewise, I know as far as purchasewise it did.

Q. Didn't you begin to spend more of your time there?

A. No, I began to spend more of my money for Atlantic TBA.

Q. Did you begin to spend more of your time there?

A. No.

Q. When your lease came up for renewal in 1954
629 did you ask for a Media station?

A. When my lease came up in '54, I don't understand the question at all.

Q. Well, I'll try to make it as simple as I can for your benefit.

Did you ask for the Media station?

A. I didn't understand the first part in regard to lease. What did you say about when my lease came up?

Q. I'm asking the questions. Did you ask for the Media station?

Mr. Kelaher: Your Honor, he asked the prior question with the word "leasing" in it.

Hearing Examiner Kolb: Read the question.

Mr. Thompson: My question is "Did you ask for the Media station?"

Mr. Kelaher: Get the original question, please.

Mr. Thompson: Mr. Examiner, I don't like this witness' attitude.

Mr. Kelaher: Your Honor, the witness is attempting to answer questions. When they are vague and general—

Mr. Thompson: It's a perfectly simple question. I asked him whether he requested a Media station?

The Witness: Well, what happened to this question you asked concerning a lease? That's what I want to know.

Hearing Examiner Kolb: He has passed that, Mr. 630 Witness; just answer this question.

The Witness: What happened to that question, your Honor?

Hearing Examiner Kolb: It's never been answered.

The Witness: Did I ask for the Media station; yes.

By Mr. Thompson:

Q. Do you know who recommended you for it?

A. Do I know?

Q. Yes.

A. Who?

Q. Yes.

A. Mr. Parris.

Q. Who else?

A. Mr. Hayes.

Q. Did you know Tom Hayes before you went to Media?

A. I did not.

Mr. Kelaher: You say you did not know him?

The Witness: I did not.

By Mr. Thompson:

Q. Tom Hayes interviewed you before you took the Media station?

A. Correct.

Q. You and he got to be close friends, did you not?

A. Just what do you mean by "close friends"? In business—

Q. Any way you want to answer it, Mr. Matthews.
631 I don't much care.

Mr. Kelaher: What was the question, please?

(The reporter read the question as follows: "Question: You and he got to be close friends, did you not?")

The Witness: Could you define what you mean by "close friends"?

By Mr. Thompson:

Q. No.

A. You mean in a business way or social way?

Q. You just answer the question the best you can and then I'll keep on asking other questions until I get the answer that I want.

Mr. Examiner, may we note on the record that it's taken this witness, by my stop watch, one minute—

Hearing Examiner Kolb: The witness has stated he didn't understand the question. Ask another one.

By Mr. Thompson:

Q. I'll ask it this way. Were you and Mr. Tom Hayes close friends?

Hearing Examiner Kolb: That was the same question you asked before.

Mr. Thompson: Yes, sir.

The Witness: To what extent? Do you mean did we play cards together, did we—I don't know what you
632 mean. Whether you mean just as a dealer-salesman relationship or what?

Q. When you were at the Media station did Mr. Hayes have a discussion with you about Auto-Lite batteries?

A. He did.

Q. Is Mr. Hayes in the court room?

A. He is.

Q. Mr. Tom Hayes, would you stand up, please.

(A gentleman in the back of the court room stood up.)

Q. Is the gentleman who is standing up the person you are talking about?

A. Correct.

Q. It was no one else? It was this gentleman?

A. That's right; and Mr. Parris was with him.

Q. And he was with him at the time of the instance you are going to talk about.

Thank you, Mr. Hayes.

Now, precisely what was said and by whom?

A. Mr. Hayes and Mr. Parris came into the station and there were ten Auto-Lite batteries setting on the floor, and they asked me what they were doing there and I told them I had an adjustment from Auto Gear in Lansdowne for some merchandise that had been returned and to do Mr. Wilbur a favor I took these batteries rather than cause—because if I returned the merchandise and 633 didn't take anything for them he naturally would lose his commission on it. And they told me that they didn't want to see any more of them in the station again. And not to put them—

Q. Not "they," what two people talking at once?

A. Not to put them on display.

Q. Who said that?

Mr. Kelaher: Your Honor, I think the witness should be permitted to answer a question fully and not be interrupted when he is—

Hearing Examiner Kolb: He's giving a conversation, is he not?

Mr Thompson: Yes, sir.

Hearing Examiner Kolb: Proceed with your conversation.

The Witness: So, they told me to put them out of sight until they got rid of them.

By Mr. Thompson:

Q. That's not my question. Who said that? Every time you answer I want to know what individual said what.

Hearing Examiner Kolb: Let the witness answer the question and then go back and find out if you want to.

By Mr. Thompson:

Q. May we have the question?

(The reporter read the following question and answer.)

633 A "Question: Now, precisely what was said and by whom?

"Answer: Mr. Hayes and Mr. Parris came into the station and there were ten Auto-Lite batteries setting on the floor, and they asked me what they were doing there and I told them I had an adjustment from Auto Gear in Lansdowne for some merchandise that had been returned and to do Mr. Wilbur a favor I took these batteries rather than cause—because if I returned the merchandise and didn't take anything for them he naturally would lose his commission on it. And they told me that they didn't want to see any more of them in the station again. And not to put them—

"Question: Not 'they,' what two people talking at once?")

Mr. Kelaher: From there, he should be permitted to answer that question fully.

Mr. Thompson: Who said that?

Hearing Examiner Kolb: He hadn't finished answering the proceeding question.

Mr. Thompson: I thought he had.

Hearing Examiner Kolb: Had you finished your answer?

The Witness: No, sir.

Hearing Examiner: All right, finish your answer.

634 The Witness: How far had I gone when I was interrupted?

(The reporter read the following answer:

"Answer: Mr. Hayes and Mr. Parris came into the station and there were ten Auto-Lite batteries setting on the floor, and they asked me what they were doing there and I told them I had an adjustment from Auto Gear in Lansdowne for some merchandise that had been returned and to do Mr. Wilbur a favor I took these batteries rather than cause—because if I returned the merchandise and didn't take anything for them he naturally would lose his commission on it. And they told me that they didn't want to see any more of them in the station again. And not to put them—")

The Witness: So, I put them in the boiler room. They told me to put them out of sight, which I did, until I had gotten rid of them all.

But both Mr. Hayes and Mr. Parris referred to them as merchandise that should not be there.

By Mr. Thompson:

Q. Have you now finished your answer?

A. Yes, sir.

Q. Who said that?

A. I said Mr. Hayes and Mr. Parris both referred to them as merchandise which should not be there.

635 Q. But the conversation about the Auto-Lite batteries you referred to continuously as statements made

by "them." Who? Which of the two made the statements...

Mr. Dias: We can't hear counsel over here, your Honor, I'm sorry.

The Witness: I said both of them; Mr. Hayes and Mr. Parris.

By Mr. Thompson:

Q. Did they say it in chorus together?

A. No, but I don't remember which one said it first.

Q. Both of them said it?

A. Yes, sir.

Q. Each of them, separately said it?

Mr. Kelaher: Your Honor, he's answered the question in every conceivable way.

Hearing Examiner Kolb: All right.

By Mr. Thompson:

Q. Did each of them separately say it?

A. I said I didn't know which one said it first.

Q. That means both of them said it at one time or another?

A. Correct.

Q. That was the only incident relating to TBA which you testified to yesterday, was it not, during your tenancy at the Media station?

A. I mentioned a motor oil additive which Mr. 636 Hayes questioned but it had been purchased from Mr. Parris, he found out later, Mr. Hayes did.

Q. Was there any other incident during the years you were at Media when Mr. Hayes complained about non-Goodyear TBA at the station?

A. I don't just recall it at the very minute. You have it on the record there.

Q. But you have stated everything that you recollect along those lines?

A. Just at the minute I do. After all, a person's mind is ninety percent subconscious, the other ten conscious.

Mr. Kelaher: Would you read the answer, please?

(The reporter read the last answer.)

By Mr. Thompson:

Q. The Media station is located on the Baltimore Pike, is it not?

A. That's right.

Q. And the Baltimore Pike is being widened?

A. That's right.

Q. Has the widening started yet?

A. It has.

Q. Has that interfered with that station?

A. Not according to the new dealer it hasn't to any extent.

Q. Was the widening started while you were still there?

637 Mr. Kelaher: Your Honor, off the record a minute, please.

Hearing Examiner Kolb: Off the record.
(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Thompson: May I have the last question read?

(The reporter read the pending question.)

The Witness: No, not at the point of the station it wasn't.

By Mr. Thompson:

Q. Had your gallonage dropped off severely due to the improvements on the Baltimore Pike before you left the station?

A. No, I wouldn't say so.

Q. Was the widening of Baltimore Pike one of the reasons why you wanted to step out of this station?

A. No.

Q. It had nothing to do with it?

A. No.

Q. Now, at the time you stepped out you had a three year lease from Atlantic, of course, didn't you?

A. Correct.

Q. And you asked Atlantic if they would be willing to cancel it?

A. I did.

Q. And you had no difficulty in getting Atlantic to 638 cancel it, did you?

A. No extreme difficulty, no.

Mr. Thompson: I think I shall now turn you over to the tender mercies of former District Attorney Mr. Mathias Correa of New York.

Mr. Correa: Off the record.

(Discussion off the record.)

By Mr. Correa:

Q. On the record I just have a few points I would like to clear up.

Now, sir, you said that you were at a meeting of Atlantic dealers at which there was discussion of an investigation. Do you remember giving that testimony?

Mr. Kelaher: Your Honor, I think—if I understand your question, I don't think there was any such testimony.

By Mr. Correa:

Q. Let me ask you this, sir: Do you remember being asked on your direct examination and making the following answer. This is at page 550 and 551 of the record:

“Question: I'm referring now to a meeting of Atlantic dealers at which the subject of a Federal Trade Commission investigation was mentioned. Do you recall any such meeting?

“Answer: I remember one meeting we had when—but I can't say when it was exactly, when we were told

639 that there was an investigation going on and that we were free to buy where we saw fit and so on and so forth; and that's what we were told at the meeting, but then after the meeting and the salesman came around and talked to us individually we were told something else."

Do you remember that, sir?

A. Yes, sir.

Q. Now, sir, do you recall the date of that meeting?

A. No, sir.

Q. Do you recall the approximate date of it?

A. No, I would be guessing if I tried to establish about when it was.

Q. Do you recall the year in which it took place?

A. No, not definitely I don't. I would have to be guessing to—I could come close—

Q. (Interposing.) We don't want you to guess; we want your best recollection.

A. I could come close but I don't have it definitely established in my mind.

Q. You say you can tell us about when?

A. I could guess, I don't have anything established in my mind.

Q. You have no recollection?

A. No.

Q. All right. Now, you have said that after the
640 meeting the salesman came around and talked to you individually and you say "we were told something else." To whom does "we" refer to in your answer, sir?

A. Dealers in general.

Q. Well, does it refer to you in particular?

A. Yes.

Q. And to what other dealers to your knowledge, if you can?

A. Mr. Hill in Darby. George Hill.

Q. Mr. Hill in Darby. Anyone else?

A. That's the only one that I recall at the moment.

Q. So that when you said—"were told something else" in this answer at page 551 of the record you meant dealers in general, i.e. yourself and Mr. Hill of Darby, is that correct?

A. I meant myself and I knew of Mr. Hill in Darby at that time.

Q. Well, did you mean anybody else, sir, and if so, please name them.

A. I don't recollect anybody in particular at the moment.

Q. Do you recollect anybody in general?

A. Not at the moment.

Q. Now, sir, you recall that you were asked by Mr. Kelaher the following question and answer—on page 552 of the record:

"Question: Now, after the meeting you have referenced to you stated Atlantic salesman came in and told you something else, is that right?

"Answer: That's correct.

"Question: Now, who was the Atlantic salesman who came into your place?

"Answer: Mr. Way.

"Question: What did Mr. Way tell you?"

And then I interposed and said: "May we have the time fixed."

"By Mr. Kelaher:

"Question: Yes, we are trying to.

"Answer: Yes, it was early in 1953."

Do you remember making those answers in response to those questions, sir?

A. Yes.

Q. Now, sir, does that refresh your recollection as to

the date of the meeting at which you were told there was an investigation going on?

A. No, not exactly.

Q. Well, does it refresh your recollection at least to the effect that the meeting was some time prior to early in 1953.

A. Well, this thing was brought up at more than one meeting.

Q. Please, I'd like to stay with the meeting you talked about at page 551 of the record now, if I may, sir.

A. I can't definitely say for sure now.

642 Q. And those answers I last read you do not refresh your recollection as to whether or not that meeting was some time prior to early 1953?

A. Yes, but this thing of—

Q. Could you answer my question?

Mr. Kelaher: Let him answer the question.

The Witness: Wait a minute—

Mr. Correa: Please, Mr. Witness, I'm not taking any directions from you.

Hearing Examiner Kolb: The witness is trying to answer your question.

The Witness: You're not trying to submit any question or answer, you confuse me.

Mr. Correa: Would you instruct the witness that he is not to make remarks to counsel that this is the matter of your Honor's controlling the court room and not the witness. I ask for instruction, if your Honor please.

Hearing Examiner Kolb: Read the question.

(The reporter read the following question:

“Question: And those answers I last read you do not refresh your recollection as to whether or not that meeting was some time prior to early 1953?”)

Hearing Examiner Kolb: Can you answer that question, Mr. Witness?

The Witness: Pardon?

643 Hearing Examiner Kolb: Does that refresh your recollection as to that having occurred prior to early 1953?

The Witness: No, because this TBA subject was mentioned at so many meetings—

Hearing Examiner Kolb: Well, it would have to be prior to '53, would it not?

The Witness: Well, there were times when the TBA was mentioned prior to '53, but what happened at which meeting I just can't definitely say.

Hearing Examiner Kolb: The question was whether it was discussed prior to that time. Is that correct, Mr. Correa?

Mr. Correa: Yes. Well, if your Honor please, the question was as to his recollection of when a meeting at which an investigation was mentioned took place. Now, he said that at the meeting he was told one thing and thereafter salesmen came around and told him something else, and he says when asked when the salesman came around and told him something else that was early 1953.

Now, I asked him does that refresh your recollection—

The Witness: (Interposing.) That date is correct.

Mr. Correa: (Continuing:) —of when the meeting took place. That's all.—

Hearing Examiner Kolb: We could spend all morning on this, Mr. Correa, but where are we going to be after you get finished with it?

644 Mr. Correa: If your Honor please, I submit that is not my fault. That is the witness. I don't think these questions are particularly complicated or difficult and I don't see why we have had to spend this much time on it.

Hearing Examiner Kolb: You have spent considerable time on it. I was wondering why you were spending so

much time on it. That's up to you, you are making the record.

By Mr. Correa:

Q. Well now, sir, coming back to this meeting—

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Correa:

Q. At which you were told there was an investigation going on. Were you told what kind of an investigation or by whom?

A. I don't recall.

Q. Well, were you told whether or not there was a Government investigation?

The answer is "no"?

A. I said I don't recall at the moment. No.

Q. You will have to answer audibly because the reporter doesn't get it otherwise.

Now, you said, sir, that in 1953, in March, there were two men came into your place and conducted an investigation. Do you remember that answer?

A. Yes, sir.

Q. Now, sir, was that before or after the conversation with Mr. Way concerning a mutual consent cancellation of lease which you have testified about as having taken place early in 1953?

A. That was after I had the discussion with Mr. Way.

Q. Now, do you know who these two men who came into your place and conducted an investigation were?

A. No, at the present time I don't. I know that they identified themselves at the time.

Q. As what, do you know?

A. I can't be sure.

Q. What is your best recollection?

A. Whether it was FBI or Federal Trade Commission, but they had proper credentials for an investigation.

Q. You said they conducted an investigation, what did they do?

A. They asked me questions.

Q. And what questions did they ask you and what answers did you give?

A. I don't recall at the moment. It was all recorded at the time.

Q. What was the subject matter of their questions, sir, if you can't recall the questions specifically?

A. I wouldn't want to guess right at the moment.

646 Q. I don't want you to guess, but haven't you any recollection?

A. No, I wouldn't guess if I had.

Q. You have no recollection of the subject matter of their questions?

A. Not right at the moment. No, sir.

Q. Was it dealing in narcotics?

Mr. Kelaher: Objection, your Honor. I think that is a frivolous question.

Mr. Correa: Well, I submit—

Hearing Examiner Kolb: Objection overruled.

The Witness: What was the question.

Mr. Correa: Read the question, please.

(The reporter read the pending question.)

The Witness: Well, if you must be radical, I would have to say no.

By Mr. Correa:

Q. Well, you recall it was not that?

A. I do.

Q. Do you have any recollection of what it was?

A. Not at the moment, sir.

Q. Now, do you recall whether or not you discussed with

these men who came into your place of business in March of 1953 the incident which you had related to us of your conversation with Mr. Way concerning the mutual consent to cancellation?

647 A. No, I don't recall.

Q. You have no recollection one way or the other on that?

A. No, sir.

Q. Did you discuss with these men who came into your place in March of 1953 the incident which you told us in your direct testimony occurred when advertising was placed in your place of business and subsequently removed by you?

A. I don't recall whether I discussed that point with them or not.

Q. Did they ask you questions on subjects related to either of those things?

A. I can't say whether they did or didn't.

Q. You have no recollection about that?

A. Not at the moment. No, sir.

Q. Now, sir, when this advertising was placed in your station you said you were not there, is that right?

A. That's correct.

Q. Who was?

A. The gentleman in charge of the place when I wasn't there. I wasn't out of town, I wasn't—

Q. I just asked you who was. We'll get on much faster if you will answer my questions.

A. I said the gentleman who was in charge—

Q. What was his name, if it's not a secret.

A. I don't recall at the moment.

648 Q. You don't remember his name?

A. No, sir.

Q. Now, don't you know, sir, didn't he tell you that he signed a receipt for that advertising saying that it had been installed to his satisfaction?

A. No, I wasn't—in fact, I was only gone a short time, I'd gone out for something and was working at the time and—

Q. (Interposing.) The question, if I may refresh your recollection, was don't you know?

A. That he signed, no; no, I didn't know that he signed.

Q. He didn't tell you that?

A. No, if he did I don't have any recollection of it.

Q. Now, sir, after this occasion in March of 1953 of which apparently you have no recollection, when was the next time you talked or corresponded with any Government investigators about the subject of your experience as an Atlantic station operator?

A. A week ago yesterday, by telephone.

Q. Where did that take place, sir?

A. I don't know exactly where the gentleman was when he called me:

Q. He called you?

A. That's correct.

Q. Now, sir, prior to your appearance here, have you discussed your testimony with anyone?

649 A. I have not, sir.

Mr. Correa: I have no further questions.

Mr. Kelaher: May we have a few minutes, your Honor?

Hearing Examiner Kolb: We will recess for five minutes.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Correa: If your Honor please, there is one further question I neglected to ask. May I have your Honor's leave to put it to the witness?

Hearing Examiner Kolb: Yes.

By Mr. Correa:

Q. Mr. Witness, on the occasion in March of 1953 when two Federal agents came to your place and in your words

conducted an investigation, did you, sir, in connection therewith sign any statement in writing?

A. I did.

Q. You did?

A. Yes, sir.

Mr. Correa: I call for its production.

Mr. Kelaheer: I have that right here.

Mr. Correa: Thank you.

May we have a moment, if your Honor please?

650 Mr. Correa: No further questions.

Redirect Examination by Mr. Kelaheer.

Q. Mr. Witness, I would like to ask you if this is the statement you signed and please state the date. (Handing document to the witness.)

A. That's correct. 3/3/53. (Document is returned to counsel.)

Mr. Kelaheer: Mr. Examiner, I now ask that this statement be marked for identification as Commission Exhibit 294-A and B—two pages.

(The document referred to was marked Commission's Exhibit 294-A and B for identification.)

Mr. Kelaheer: Mr. Examiner, Commission Exhibit for Identification 294-A and -B is a statement signed by Mr. James B. Matthews on March 3, 1953, in the presence of Attorney Examiner L. E. Janson, an Attorney Examiner of the Federal Trade Commission in response to questions concerning his service stations operation as an Atlantic Service Station lessee dealer located at Church Lane and Bailey Road, Yeadon, Pennsylvania.

I now offer Commission Exhibit 294-A and 294-B into evidence.

Mr. Correa: No objection.

Mr. Ballard: No objection.

651 Hearing Examiner Kolb: The document will be received in evidence as Commission Exhibit 294-A and -B. (The document referred to, heretofore marked for identification COMMISSION'S EXHIBIT 294-A and 294-B, were received in evidence.)

By Mr. Kelaher:

Q. Mr. Matthews, when Atlantic changed over to the Goodyear TBA line, did they consult you or ask your preference with respect to their change-over?

A. No.

Q. Mr. Matthews, during your operation of the three service stations did you always pay your rent in full and promptly?

A. Did I always pay my rent?

Q. Did you always pay your rent?

A. My rental up until December of this year—or this past year—was paid on a gallonage basis and it was changed to a commission basis December 1, '56, and at that time we were—I left a deposit with the company of \$650 in advance which is at, the company still have that at the present time because I haven't made settlement for the last month and the first 7 days of the next month.

Q. Up until that time you had—

A. It was always paid on a gallonage basis.

Q. And you paid it promptly, is that correct?

A. Well, within a few days—

652 Q. Within a specified time?

A. That's correct. Maybe I was late with a check once in a while for gasoline, but not any weeks or months or anything like that; just a matter of a couple of days.

Q. Did you ever receive a warning letter from Atlantic with respect to the cleanliness of your station during any of the three—in any of the three stations which you operated?

A. I can't ever say that I received anything in writing, I was told on a couple occasions that I should keep it cleaner, which we did in cooperation with the company.

Q. And did you normally keep a clean station?

A. Comparatively.

Q. And did you employ any personnel in your stations?

A. Yes, sir.

Q. And about how many hours did you keep the three stations open?

A. In Darby I operated 24 hours; in Yeadon I operated 17 hours—7 to 12—7:00 a. m. to 12:00 midnight; and in Media I operated 24 hours.

Q. And during all of the hours you have specified was either you or an employee of yours present at the station?

A. Yes, sir.

Q. Yesterday you referred to a Mr. Arnholt. Do you know what Mr. Arnholt's title was with Atlantic?

A. He was in a supervising capacity.

653 Q. And he was in charge of TBA in your area, is that correct? Sales supervisor.

Mr. Ballard: I object unless the witness knows the answer to this question.

Hearing Examiner Kolb: Does the witness know?

The Witness: He was in the sales department in the supervising capacity.

By Mr. Kelaher:

Q. Was he in charge of the various Atlantic salesmen, such as Atlantic salesman Hayes and Hoffman who came into your station?

A. To the best of my knowledge, yes; he was their superior.

Q. And was he Atlantic salesman's Way's superior at that time?

A. Correct.

Mr. Kelaher: No further questions.

Mr. Correa: May I have the last exhibit?

(Document is handed to counsel for Goodyear.)

Retross Examination by Mr. Correa.

Q. Now, sir, remember I asked you whether on the occasion of this interview with Government investigators in March of 1953 you had said anything to them about the incident related on your direct examination when you 654 say Goodyear signs were put into your station in your absence and subsequently taken down by you. Do you remember that, you said you had no recollection.

A. Of it being mentioned at the time of the investigation?

Q. Yes.

A. I said I didn't have any definite recollection of it, no. But it was possible.

Q. I show you CX-294-A in evidence, and ask you does an examination of that exhibit refresh your recollection that you did not tell the Government investigators of any such incident? (Handing document to the witness.)

A. I don't see anything about it here.

Q. Well, my question, sir, is does it refresh your recollection that you did not tell the investigators of any such incident?

A. Well, I evidently didn't or they didn't write it down. I don't see it here.

Q. What is your recollection?

A. I still don't recall whether or not I did.

Q. Now, sir, you testified on direct examination that at this time your wish and desire was to sell Lee tires, is that correct?

A. That's correct.

Q. And that is the fact, is it?

A. That's right.

655 Q. And did you wish to sell Goodrich tires?

A. No, I never sold Goodrich tires. This question here that mentioned Goodrich tires the subject wasn't brought up by me.

Q. You hadn't given any thought to buying or to selling Goodrich tires prior to March of 1953?

A. Not to my recollection; no.

Q. So that it was the Federal Trade Commission Attorney Investigator who was promoting the Goodrich line, is that it?

Mr. Kelaher: I object to that characterization.

Mr. Correa: Withdrawn.

No further questions.

Hearing Examiner Kolb: Any further questions?

Mr. Kelaher: Just a minute, your Honor, I think we do when they have completed with the document.

656 Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Matthews.

(Witness excused.)

Mr. Dias: Mr. Iacono, please.

ANIELLO L. IACONA was thereupon called as a witness for the Commission, and having been duly sworn, testified as follows:

Direct Examination by Mr. Dias.

Q. Please state your full name and home address.

A. Aniello L. Iacona, 1026 Woodland Avenue, Sharon Hill, Pennsylvania.

Q. Did you at one time operate an Atlantic station?

A. Yes.

Q. Can you give us the address of that station, please?

A. Well, it was the corner of Providence Road and South Avenue, Secane, Pennsylvania.

Q. When did you go into that station?

A. January 18, 1952.

Q. And did you change stations at all after that period, or were you in the same station throughout your term with Atlantic?

A. I stayed right there, one place.

Q. When did you leave the Atlantic station?

A. October, 1954, I think.

Q. Now, if you will, please, give us the periods—
657 you signed a lease when you went into the station, did you?

A. I think the first lease I signed was a six-month lease and then another six-month lease and then a year lease. Two six-month leases and a year's lease.

Q. Let's talk about the first lease. Do you recall the period involved there?

A. January to June.

Q. January to June of 1952?

A. Yes, and then June to December.

Q. June to December of 1952?

A. Yes.

Q. And the year's lease ran from when?

A. I think I had a lease in January—from October to October, I guess it was, when I went out.

Q. When, at any rate, you received your first year's lease, that was the latter part of 1952 or early 1953, is that correct?

A. I think it was, yes.

Q. And the four leases you received, that was another year's lease?

A. I think I was there two years, total, altogether, 1952 to 1954, I went out in October, I know that.

Q. Now referring to the time you took this station originally, was that a new station?

A. Brand new, I opened it up brand new.

658 Q. Did you carry TBA in that station?
A. Yes.

Q. And what brand TBA did you carry?

A. Mostly Goodyear TBA; the distributor was Ed Parris. I had all Goodyear tires and DuPont's chemicals, Goodyear tubes, batteries; when I first went in I got \$1340 worth of TBA from Ed Parris, the salesman wrote up the order for me when I was just getting in.

Q. Which salesman?

A. John Clark of Atlantic Refining Company.

Q. Do you recall when he wrote that order for you? Was it before you went into the station?

A. Before I went in, in December, I think. The station was supposed to be ready in November and bad weather held it up and I didn't go in until January.

Q. Was the TBA in the station when you moved in and started doing business?

A. It was sent there a couple of days before I opened up.

Q. Did you mention John Clark? You mentioned him as the salesman, didn't you?

A. That was the salesman at the time.

Q. How did you come to choose Goodyear TBA?

A. How did I come to choose it?

Q. Yes.

A. Well, I was getting into business and I was trying to get the station so he says when I got home the 659 station was mine if I wanted it, and I had to have \$5,000 to go into the station and there was so much rent to start, for the first six months, and he says "We have a distributor by the name of Ed Parris," which had his place of business in Sharon Hill at Clifton Avenue and

Chester Pike at the time, and he says "You will get your TBA from him," tires, and tubes, and what-not. So he wrote up the order and I made out the check and paid him and Parris delivered the TBA, which was all Goodyear tires and tubes and the chemicals were DuPont's at the time.

Q. Did he ask you if that was what you wanted?

A. No, he didn't ask me.

Q. Did you carry anything other than Goodyear TBA thereafter?

A. Thereafter I did, yes. I had a problem there with adjustment on tires and I got kind of mad. They wouldn't make adjustment, so I started buying from Gaul Derr & Shearer and started putting in Century tires and tubes, Delco batteries and I put in Packard battery cables. And I put in other chemicals like Barsleak.

Q. Can you tell us roughly when that was you started buying those products?

A. I guess around 1953.

Q. The early part or the latter part of 1953?

A. I guess it was in the spring of the year, because I just got a load of tires in, 30, 60, 90 days and they wouldn't make adjustment on the tires that a customer of mine 660 got and that is when I got mad and called Ed Parris and told him to take the tires back if he wouldn't make an adjustment, and they refused to make the adjustment and I talked to the salesman from Gaul Derr & Shearer and he said Century tires were unconditionally guaranteed and that is what I wanted because I had to please my customers, and I had a couple of defective Century tires they made good. And it was, I guess in the spring of the year.

Q. That was after your second six-month lease?

A. I think it was the second or the year's lease.

Q. How do those leases operate? You went in and signed a lease for six months?

A. Yes, I mean they couldn't base your rent until the station got operating, that was their idea, to find out what the station would do and they would give you a year's lease. I think I had two six-month leases.

Q. After the expiration of the first six-month lease, did you get a new lease?

A. Six-month, yes.

Q. Did you actually get a lease or did they extend the first one?

A. You got another written lease that had to be signed.

Q. When the second one expired, did you get a new lease for a year?

A. Yes, a new lease for a year.

661 Q. During your first lease, when you carried—during the first six-month lease in your station, did you receive any complaints about the operation of your station?

A. No.

Q. During the course of your second six-month period, did you receive any?

A. It was during the year's lease when I started to get complaints.

Q. Can you tell us when this occurred, the first complaint?

A. When I started to handle outside merchandise, like Century tires and tubes, and outside chemicals.

Q. Can you tell us who it was that complained—

A. (Interposing.) It was Tom Hayes, George Arnholt and Ed Parris.

Q. Do you recall their conversation relative to those problems?

A. Well, I remember one time he walked in behind Mr. Arnholt and I had Century tires and Tom Hayes was in front of him and he says to Tom Hayes—I recall this question—he said, "What kind of a salesman are you with this man having Century tires in there," and Tom gave

me a dirty look. And when it blew over, Tom came in and said "I got the devil and you have to get rid of these tires." I said I wasn't going to. At the time I had a trickle charger that we used to put our wet batteries on and I had Delco batteries on the rack instead of Good-year.

662 Q. Was there any comment as to that?

A. Yes. I was told to take them out, too. And then I refused to do it and I think this one month I hadn't bought hardly anything off Ed Parris, and the three of them, Tom Hayes and Ed Parris, come in and wanted to know what the trouble was, and Mr. Arnholt showed up, so I told Ed Parris what the trouble was, that I wasn't satisfied with the product because of their adjustment. It lost my customers on account of the adjustment, and I didn't think that was fair.

Q. Did you have any difficulty in connection with accessories? Did you carry accessories?

A. Yes, at the time I did.

Q. Fan belts, hoses?

A. Well, I carry, like I say, DuPont. We had a DuPont line of sealer and I used to carry Barsleak and I had Bardahl oil additive and Mr. Arnholt made a remark about that one day, that the Atlantic oil was so good we didn't need an additive, and I had people that used to ask for it.

Q. What about some of the other products you mentioned?

A. Barsleak, he didn't like the idea of having that on the shelf. He picked up a bottle of that and said "What is this," and he could read it, he knew what it was.

Q. How about fan belts?

A. I stuck to Goodyear fan belts and hoses. I had outside battery cables, like I said, Packard battery cables.
663 that I bought from Gaul Derr and Shearer.

Q. Was there any comment made by them about that?

A. Yes.

Q. What?

A. They were on the shelf when I checked out and the incoming dealer refused to buy them because it was outside merchandise.

Q. Did you do any advertising around your station?

A. What do you mean by advertising?

Q. Well, did you advertise any of the products which you carried other than Atlantic gasoline?

A. There was a Goodyear sign out on the pole, Atlantic and Goodyear tires.

Q. Did you advertise any of these other products you mentioned?

A. No, I just had them on the shelves, not outside.

Q. Did you ever put up signs or attempt to put up signs?

A. No.

Q. How did you come to terminate your lease in October of 1954? Was it your idea to get out, or what?

A. No, during the last year I was there, during the summer months, I remember Tom Hayes and George Arnholt coming out to reach an agreement and they tried to get me to sign it. I refused to sign it and he said, Mr. Arnholt said, he pulled an inspection on me and said I had a dirty station, which I didn't think was dirty myself. They seemed to think so. So he sent me a letter that my lawyer in Chester has, Mr. Katana, and in the letter they said they would give me one week to get the station in tip top shape and there was five counts against me. They were: untrained personnel, improper uniform, improper display, didn't keep a date book, which I refused to show them, because I didn't think it was their business, it was my business, I was running it, and I had a date book and I refused to show it to them every time he come in

and the five counts—the dirty station, that was the fifth count.

So I sent that letter to my lawyer and told him I didn't want to be bothered until my lease was up. I didn't receive any letter that they were going to cancel my lease. Tom Hayes said there was a new dealer coming in and that was the first of October, 1954 that he stopped in. Then I had a 7-up box out in front that George Arnholt didn't like because it was white and he says "Get that box out of here," and I refused to get it out and he said—it was a red, white and blue box, because it was 7-up, and he commented about that. I said I wasn't going to get it out, because it was my box, I bought it and paid for it, and he says Coca-Cola is putting out red boxes for Atlantic stations, which I thought was a fib myself, and he says that is why Coca-Cola is putting out a red box, and I said "If you want one, put one in, because I am not."

665 By Mr. Dias:

Q. I hand you Commission's exhibit 257-A and ask you if this is the five or six-point letter you referred to?

A. Yes, this is the letter.

Q. Taking these items one by one, "The standard of housekeeping maintained by you is deficient." What did that mean to you?

A. Read that again.

Q. "The standard of housekeeping maintained by you is deficient," lacking, in other words not up to par. What did that mean to you?

A. Well, at the time it didn't mean anything to me because I thought my station was as clean as any other Atlantic station around, because I used to go to other ones and I mean, the same station right now, I don't think it is as clean as they said it should be, even now. I go there about every day. I think I kept it cleaner than that when I had it. To me it looks like a pig pen today.

That is their idea, because I wouldn't keep their products in there, and that letter is some way to get you out of there.

By Mr. Dias:

Q. Let me refer you to number two now. "The efficiency of services performed at your station is not on a par with competition."

666 A. I didn't understand that myself, either. At the time we were in a price war. I don't know how you can stay in competition when you are having a price war and because I wasn't in a critical zone I wasn't allowed to go down in prices, so I say you can't meet competition.

Q. Number three: "You have not met the minimum requirements for display." What did that mean?

A. Well, I don't know. To me, I would have the proper display out of motor oil and tires. I don't know what else they wanted.

Q. Number four: "Personnel are poorly trained." How many personnel did you have?

A. At the time I had two full time and one part time and myself, four of us.

Q. How many hours did you keep the station open?

A. We were open from 7 a.m. to 11 p.m.

Q. Did you determine those hours yourself?

A. Yes, sir.

Well, they asked you, they would like you to keep open certain hours, but I thought those were good hours to keep, so I did.

Q. 7 a.m. to 11 p.m.?

A. Yes.

Q. How many shifts is that, off hand?

A. Two shifts.

667 Q. Did you have a man there at all times?

A. Yes, sir.

Q. Were you there most of the time?

A. Most of the time. If I wasn't there, there was somebody responsible there.

Q. Number five. "You do not have a regular program for expanding the sales involving direct mail campaigns, personal solicitation, and so on."

A. I didn't have personal solicitation, but I did have a mailing program.

Q. Of what type?

A. I would mail out cards on lubrication, tire sales, and what-not.

Q. Did you say tire sales?

A. I had a mailing list.

Q. You mentioned tire sales.

A. Yes.

Q. What type tire?

A. Good year tires.

Q. Number 6: "You do not maintain records adequate to reflect the financial status and return from various phases of your business."

A. I refused to show it to them, because it was my business not Atlantic Refining Company's business. I never went in to look at their books, and I didn't think they had a right to look at my books, and that is the way I felt.

Q. Did anybody from Atlantic see your records ever?

A. Tom Hayes, the fellow in the courtroom.

Q. This was written in 1953. When did he see your records?

A. I have only showed them to him a couple of times. They expect to walk in and pick up your books and look at them any time. I would take them home so nobody could look at them but myself.

Q. What did those records contain?

A. It was a daily sheet of sales, how much TBA you would sell, and your labor for the day and gas and oil.

"I have a date book from the day I started right up until today, with Cities Service, and I can show them every record they want to see, but I don't show anybody my records; the only person that sees them is the Government.

Q. Now after you received that letter, did you receive any other notice from Atlantic that you recall?

A. Notices?

Q. Yes, about inspections or anything of that sort?

A. No, only I had other inspections, but I mean this one particular inspection, after it was all over with, Tom Hayes said you came through with flying colors, and that was it. I never heard anything else. And we cleaned up because it was a special inspection as far as I was concerned, because George Arnholt was coming in to inspect himself, so just to keep peace, we cleaned the place up. It was spic and span. We keep it pretty decent for a service station.

Q. Have you ever heard of the phantom, Atlantic's phantom?

A. I heard of it, yes, but I don't remember him ever stopping around.

Q. You don't know whether he actually stopped in your station?

A. No. They might have, as far as I know.

Q. When you terminated, or when your lease was expired or cancelled, will you clear me upon that? Was it cancelled or not renewed?

A. I just didn't get a renewal. I figured all the trouble I had with them, I wasn't going to get another one anyhow.

Q. When did you first know it was not going to be renewed?

A. I guess the week before Tom stopped in and said

he had a new dealer. I don't remember receiving any letter. I am almost sure I didn't. I mean, I had to get out. It was either get out or kill George Arnholt, one or the other. That was the problem I had, believe me.

Q. Did Mr. Arnholt give you any special trouble?

A. Well, I mean, I didn't like his attitude and his ways. He was disagreeable, you couldn't reason with him. I mean like that stuff about a white soda box. I don't see that. And I even said, "What are you, a Communist or something?" If I want a white soda box, I paid for it. That man would drive you nuts. I wasn't going to Norristown on account of him.

670 Q. Did he give you trouble on TBA products?

A. Yes, he did, he certainly did.

Q. Products other than the Goodyear line, is that correct?

A. He didn't like the idea of having anything in there. At one time I told him, "Mr. Arnholt, I wish I had a tape recorder in here, I would hang you right now." He says, "I didn't say nothing." And I said, "I know you didn't, because I don't have a tape recorder and a couple of witnesses." He was sneaky, brother.

Q. You were told by Mr. Hayes about a week before your lease was to expire, and as far as you remember, that was the only—

A. (Interposing.) As far as I remember, that was it. I don't remember anything else.

Q. Do you know who took your station over?

A. Carmen Gerace.

Q. What did you do when you terminated the station? Did you sell your products to him?

A. I sold him everything, it was only a couple of things we had argument on that he wouldn't buy because they were outside merchandise, and then there was a trickle charged there which was Goodyear that I didn't want to

take with me and he refused to buy that, I had to leave it, and any outside merchandise I had he refused to buy. I don't remember everything I had.

671 Q. Was the Atlantic representative there during these negotiations?

A. Yes, Tom Hayes was there, the incoming dealer, the outgoing dealer, and I had my accountant with me.

Q. Did the Atlantic representative take any part in this closing out of the sale of products?

A. Yes, he wrote every item down he bought.

Q. That who bought?

A. The incoming dealer. I mean, each sheet was filled out with any merchandise he bought and we both had to sign it but when he came to outside merchandise, he refused to buy it.

He had gone to Atlantic's School and I guess he was taught not to buy anything from the outside.

Q. He came out of school?

A. Yes, he went to Atlantic's school.

Q. Did you have any difficulty, or did you sell him your Goodyear stock? Did you have Goodyear stock?

A. Yes, what I had he bought.

Q. Referring back to the time you started purchasing so-called outside TBA, can you name again for us the suppliers, the various suppliers you purchased from?

A. I bought off Gaul Derr & Shearer, in Philadelphia; I bought off of V. J. in Folcroft—at the time they were in Sharon Hill—and I bought off of Auto Parts and
672 Radiator in Folcroft, and I guess that is about it. And Ed Parris; he was the Atlantic distributor.

Mr. Dias: That is all.

Cross-Examination by Mr. Thompson.

Q. Mr. Iacona—did I pronounce your name correctly?

A. You did, sir.

Q. Do I correctly infer that you don't like George Arnholt?

A. Well, I don't, I will be truthful. I don't.

Q. But you do like Tom Hayes, don't you?

A. I am not too happy with Tom Hayes, I will be truthful.

Q. Did he push you around a bit?

A. He tried to, but I wouldn't let him.

Q. He came to see you pretty often, didn't he?

A. Quite often, yes, sir.

Q. These Atlantic salesmen get around once or twice a week to all the stations, don't they?

A. Sometimes more than that.

Q. Sometimes more?

A. Sometimes.

Q. Do you live around the neighborhood of this station, at Providence Road and South Avenue?

A. No, sir, I live in Sharon Hill, sir.

Q. That particular station is how far away from McDade Boulevard? Quite a ways, isn't it?

673 A. I would say it was within a mile. I might be wrong on that.

Q. It is out in the residential section of the county though, isn't it?

A. Well, it sits right around the street from the Secane station and there is only a few homes right around the station. There is more stores than homes in the area of the station, I would say.

Q. The old Tully-Secane (?) Golf Course is near the station?

A. Yes, that is half way between the station and McDade Boulevard.

Q. And that was a residential area?

A. There is a Catholic Church, Our Lady of Fatima, and school there now.

Q. And a lot of it has been turned into building developments?

A. That is part on Ashland Avenue side, and South Avenue.

Q. Closer to your station, just before the station opened, wasn't there quite a large building development?

A. Stores.

Q. And also a lot of houses?

A. Right in the area of the station?

Q. Yes.

A. Not close to it. There has been recently, in the past year, last couple of years.

674 Q. Well, do you know the people who live around there at all?

A. Do I know them?

Q. Yes.

A. Yes, quite a few of them.

Q. You talked about the station being late in opening. It was a new station, wasn't it?

A. Yes, sir.

Q. Do you remember why it was late?

A. Because of the bad weather, they run into bad weather, they was hoping to have it finished by December and run into bad weather and when I opened up, I opened up without a driveway, a macadam driveway, it was stone.

Q. Don't you recall that there was a neighborhood protest against any kind of a gas station being opened at this location?

A. The building was almost finished then. Sure, there

was a protest against it, but I didn't know about it. I heard about it afterwards.

Q. Did you know that the Zoning Board of Adjustment turned down application for a station here?

A. For that particular place?

Q. Yes.

A. No, I did not. I was in the Service at the time, sir.

Q. When did you get out of Service?

675 A. Well, I got called back during the Korean War.

I was in the Second World War and I got home in 1946 and was home four years and got called back in the Korean War, because I was in the Reserves and when I got out, I went with Atlantic.

Q. Did the people in the neighborhood after you opened the station tell you the story of the Zoning Board turning it down and they appealed to the courts?

A. There was a few people told me about it, yes.

Q. You knew about it anyhow?

A. I knew after I was there.

Q. Did they tell you whether the Judge put some special conditions down for the station?

A. They never told me.

Q. You were not familiar with that?

A. No, sir.

Q. Were you told that Atlantic was paying particular attention to the appearance of this station because of the neighborhood problem?

A. Not as far as I remember I wasn't told about that, no.

Q. Now you and your wife are both quite good horsemen, aren't you?

A. Yes, sir.

Q. I have seen you in horse shows, I think.

A. You have never seen me.

Q. I have seen your wife then, haven't I?

676 A. No, sir.

Q. Where was your stable, just close to the station?

A. Right across the street from the station.

Mr. Dias: I object, your Honor. I don't see what this has to do with the problem at hand. I think it is improper cross-examination.

Hearing Examiner Kolb: I think the last question is confined to the station, wasn't it?

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: All right.

Mr. Thompson: It is very definitely relevant.

Hearing Examiner Kolb: Proceed.

By Mr. Thompson:

Q. Now while you were running the station, you were running a stable across the way?

A. I wasn't running a stable. My wife takes care of the stable. That is what George Arnholt thought, that I was running the stable, and he was wrong.

Q. You acted as the stable hand, didn't you?

A. No, sir. I would walk over now and then, when I wasn't busy, when I had proper help in the station, but I wasn't running the stable.

Q. How many horses were you keeping in those days?

A. I wasn't keeping any; my wife was keeping them.

Mr. Dias: I object, your Honor.

677 Hearing Examiner Kolb: Objection overruled.

By Mr. Thompson:

Q. There was about 12 horses in the stable across the way, weren't there?

A. That was a good block away from the garage.

Q. You are not going to tell me your wife cleaned out the stalls for 12 horses?

A. I had hired men there.

Q. You did a lot of it yourself, didn't you?

A. No, sir, I did not, and to this day I don't.

Q. I am very fond of horses, and I know they require a good deal of attention.

A. I had proper help to take care of the stable.

Q. You don't still run it, do you?

A. Yes, sir, I do.

Q. At the same place?

A. Same place.

Q. Didn't you spend about as much time at the stable as at the station?

A. I spent more time at the station.

Q. But it is true, Mr. Iacono, that on a number of occasions you would go over and help your wife clean out the stalls?

A. Never. Never.

Q. You didn't do that ever?

A. No, sir.

678 Q. You just never helped her?

A. I had the proper help to take care of the stable. I would go over and ride on Sundays.

Q. If you never helped her at that stable, I think you are a brute.

A. I might be, but I had the proper help to take care of the stable.

Q. Isn't it also a fact that in the summer time you would attend this station in dungarees and with no shirt on and completely covered with the things that you find around a stable?

A. I had coveralls on all of the time, from Eastern Overall. I had proper uniforms.

Q. And you wore them yourself?

A. I had mine on, with my name on it, "Andy."

Q. And you didn't serve the station in dungarees and without a shirt?

A. Not me, no, never. I never waited on customers without a uniform on.

Q. You had quite a lot of arguments with Tom Hayes about it, anyhow, didn't you?

A. When they started sticking their nose in your outside business, I don't think that is right. They didn't have anything to do with the station.

Q. How about your use of the station—

679 A. (Interposing.) What do you mean?

Q. I haven't finished my question.

A. All right.

Q. Did you use it as a used car lot or for cars for sale?

A. I had cars at times for sale there, yes, maybe one or two.

Q. That was specifically prohibited by the lease, wasn't it?

A. I don't remember, it might have been.

Q. Did the neighbors complain to you about that use of the station?

A. About used cars?

Q. Yes.

A. Not that I remember, no, sir.

Q. Were you told that they complained to Atlantic about it?

A. If I was told, I stopped it.

Q. Did you charge parking fees at the station?

A. Never.

Q. You operated it as a parking lot for friends, didn't you?

A. What is that?

Q. You say you did?

A. And they still do today, sir.

Q. You did operate it as a parking lot?

A. Customers would leave their cars there to be serviced, they parked there, yes.

680 Q. Do you know a gentleman living in that neighborhood named Mr. John Dowling?

A. No, sir.

Q. You never heard of him?

A. I can't remember.

Q. D-o-w-l-i-n-g?

A. Maybe I would recognize him if I saw him in person.

Q. Maybe I can refresh your recollection by identifying him. Do you recall him as being the nuisance inspector of the township?

A. He was the nuisance—

Q. Yes. Do you recall him?

A. From Upper Darby?

Q. Yes.

A. The only inspector I remember was the inspector that came around to check the garage, the fire chief inspector.

Q. How about the Health Commissioner, do you remember him?

A. No, that is the only one I remember.

Q. Now did the nuisance inspector come around and make complaints about the sanitary conditions at your station?

A. (Nodding negatively.)

Q. He did not?

A. Not that I remember. The only one I remember at the station was the fire chief.

Q. Did the fire chief complain about the amount of refuse in back of the station?

681 A. No, sir.

Q. Did the nuisance inspector or the Health Commissioner—

A. (Interposing.) I don't remember the gentleman, sir.

Q. Not when you were there?

A. Not when I was there, no.

Q. Did your employees report to you that that had happened several times?

A. (Nodding negatively.) If anybody important ever came to the garage, they would write down and tell me about it. I don't remember any gentleman by that name stopping in and I don't remember receiving a letter from the Health Department.

Q. Do you remember neighborhood complaints about an old truck body you had on the station a long time?

A. And it was taken away.

Q. But you do remember the complaints?

A. Yes, but what has that got to do with TBA? I can't understand that. We are talking about TBA and you are talking about horses and truck bodies and used cars.

Q. Well, I will try to make the point after a while.

A. Okay.

Q. How about these lads you had working around the station. You say you had two full time employees,

A. Well, one was just graduated from high school and the other was my son.

Q. How old were they?

682 A. 18, one, and the other one 17, and I had an older gentleman who was 27.

Q. Is it important in the operation of a station for the employees to know what they are doing when a car comes in for service?

A. That's right.

Q. They have to know all kinds of mysterious things like lubrication, don't they?

A. That's right.

Q. Had these boys been trained?

A. Well, I wasn't even trained myself, when you get down to it.

Q. Yes, I think I would agree with that. You never went to a training school at all?

A. I didn't go to a training school, no.

Q. Without in the slightest deprecating a competitor of Atlantic, your training had been gained by City Service, had it not?

A. What do you mean gained?

Q. Had you been a City Service operator before you got the Atlantic station?

A. No, no, never.

Q. You took City Service station afterwards?

A. Yes, sir.

Q. You came right out of the Service into Atlantic?

683 A. That's right.

Q. Do you know a Mr. W. P. Ferguson who lives in the area?

A. In the Secane area? No, I don't think so.

Q. How about a Mr. Cyrus McKeown, do you know him?

A. Not by name, no, sir.

Q. You don't recognize the names or don't know their wives as customers of the station?

A. Not off hand, I don't, no, sir. It has been back too far.

Q. Were you advised by Tom Hayes that both of them had filed complaints about the lubrication service they got at your station, complaints with Atlantic, I mean?

A. Not that I remember.

Q. Were you advised by Tom Hayes that other complaints were filed with Atlantic about the rudeness of the employees at your station to customers?

A. Not that I remember, no, sir. They might have, but I don't remember.

Q. Did Mr. Hayes tell you what ratings you were getting on the inspection reports at this station?

A. Yes.

Q. Very bad, weren't they?

A. As far as they were concerned, sir. Hell, I can pull an inspection on them and give them the same rating and pull another one on you and give you the same rating.

684 I have been through a lot of inspections, believe me, and I still have inspections today with City Service, and by God they are better. That is their opinion. When they don't like you, by God, they give you anything.

Q. Do you get along well with City Service?

A. Yes, sir.

Q. You are much happier than you were with Atlantic?

A. That's right, and if you don't believe me, ask Frank Gible, because he used to be with Atlantic.

Q. I congratulate you on your sense of humor.

Mr. Thompson: That is all.

Mr. Correa: I have no questions.

Hearing Examiner Kolb: Any further questions?

Mr. Dias: No, sir.

Hearing Examiner Kolb: That is all, you may be excused.

(Witness excused.)

Mr. Kelaher: May we have a short recess, your Honor?

Hearing Examiner Kolb: We will take a five-minute recess.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: Come to order.

Mr. Kelaher: I would like to call Mr. Pollack to the stand.

685 ISIDORE JACK POLLOCK was thereupon called as a witness for the Commission and having been sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Would you please state your full name?

A. Isidore Jack Pollock.

Q. What is your home address?

A. 7442 Malvern Avenue, Philadelphia.

Q. Were you at one time an Atlantic leasee dealer?

A. Yes.

Q. During what period and what locations?

A. 1940 to 1948, at 10th and Chestnut Street, Chester, and from 1948 to March of 1953 at 9th and Kerlin Street, in Chester.

Q. So you were an Atlantic leasee operator for 13 years approximately?

A. Approximately, yes.

Q. When you first became an Atlantic dealer in 1940, was TBA a very important factor in service stations?

A. No, very secondary.

Q. When did it become an important factor in service stations?

A. I would say approximately after the war, about 1946.

Q. And from that time on did it develop as an important factor?

A. It developed very important. It was quite a bit of profit in the gasoline business.

Q. Now do you recall being notified by Atlantic that it was going to sponsor Goodyear?

A. Well, the first I have a recollection of that, we were called to have a luncheon or a buffet, a dinner, or something and I don't recall what it was, and at that meeting

or dinner or luncheon, it was broached that we were going to be connected with Goodyear products.

Q. And do you recall the approximate date of that?

A. The approximate date?

Q. Yes.

A. I am afraid I couldn't. It might have been possible sometime in 1951, I think, I am not sure.

Q. Could it have been in or about March, 1951?

A. It could have been. I am not sure.

Q. Now prior, up to that time, what brand tires had you been carrying?

A. Lee Tires.

Q. And what brand batteries?

A. Exide.

Q. And what brand of accessories? Just some of the more important brands?

A. Why, polishes of one sort or another; then, it wasn't Simonize. And some of the DuPont, and—

687 Q. Did you purchase Fram oil filters?

A. Yes.

Q. And Thermoid fan belts?

A. That is right.

Q. And from whom did you purchase, who was your primary supplier of TBA?

A. Ed Parris.

Q. Where was he then located?

A. He was then in Sharon Hill. I don't recall the exact address now. On Chester Pike.

Q. And after that announcement of the change-over by Atlantic to Goodyear, did Mr. Parris continue to sell Lee tires, Exide batteries, and the various brands of accessories you were carrying?

A. Why, he sold them until his supply ran out.

Q. Did he then become the Goodyear TBA supplier in your area?

A. That is correct.

Q. And after the change-over at that time was your station identified with Goodyear valances, window valances?

A. Yes.

Q. And was it identified with the Goodyear outdoor sign?

A. Yes.

Q. Prior thereto, did you have a Lee or Exide sign up?

A. Yes, I think I did.

688 Q. And were they removed?

A. They must have been.

Q. And were you advised that this change-over in identification was to take place?

A. No, sir.

Q. Was it done at your request?

A. No.

Q. Now did you continue to carry Lee tires after the change-over in or about March 1951?

A. Yes, I carried them until I sold the merchandise I had on hand.

Q. And did you begin to purchase Goodyear tires at that time?

A. Yes, I purchased Goodyear tires.

Q. And from whom did you purchase Goodyear tires?

A. From Ed Parris.

Q. And after your Lee tires ran out of stock, did you thereafter purchase Lee tires?

A. Yes, I bought Lee tires afterwards also.

Q. Can you state the circumstances surrounding your first purchase of Lee tires after the stock ran out?

A. Well, I was offered a very good deal, I thought, from Lee Tire, and I purchased them.

Q. About how many tires did you purchase?

A. Anywhere from 25 to 50, I believe.

Q. That would be a substantial purchase, would it not?

689 A. That is right.

Q. Was anything ever said about such purchase by Atlantic representatives?

A. There was a Mr. Vayda, and he sort of tried to raise the devil with me about why I purchased—

Q. (Interposing.) Who is Mr. Vayda?

A. He was my salesman.

Q. And for which company?

A. Atlantic Refining Company.

Q. Did anyone else from Atlantic make any comments about purchasing—

A. (Interposing.) A Mr. Arnholt. He was the immediate superior of Mr. Vayda.

Q. About what approximate date did this occur?

A. I beg your pardon?

Q. About what approximate time were the statements made by Mr. Vayda and Mr. Arnholt?

A. It must have been sometime in—possibly in the latter part of the summer or fall of 1951.

Q. Would you state the conversations you had with Mr. Vayda and Mr. Arnholt at the time?

A. Well, they had asked me why I purchased the tires.

Q. Do you mean Lee tires?

A. Yes, instead of buying from Goodyear. Or from Ed Parris. And I told them that it was cheaper, the
690 deal that I received, and if I could receive the same deal from Goodyear or Ed Parris, as I did from Lee, I would have purchased Goodyear, but as I didn't, I bought the Lee tires.

And Mr. Arnholt said, after all, you have been with the company for quite some years, there is no reason why you shouldn't continue to buy from the company.

Q. And thereafter, did you make purchases of Lee tires?

A. Yes.

Q. And was any comment ever made by any Atlantic representative?

A. Just a sly dig now and then.

Q. Who would make the sly digs?

A. Mr. Vayda.

Q. Now, did you purchase any brands of batteries, other than Goodyear brand, after March 1951?

A. Yes, Bowers batteries.

Q. Was anything ever said to you by an Atlantic representative in respect to your purchases of Bowers batteries?

A. Yes. I had a large sign outside with batteries on the display and they asked me to take them in, to remove them.

Q. Was the large sign, did the large sign advertise Bowers batteries?

A. That is right.

Q. Can you fix the approximate time when this occurred?

A. It was approximately, I would say, the spring of 1952.

691 Q. And do you recall the name of the Atlantic representative who made the statement to you?

A. Mr. Vayda.

Q. Did Mr. Vayda ever make any other comments to you with respect to the purchase of Goodyear TBA by you?

A. In what respect?

Q. Did he ever threaten you with cancellation?

A. Well, with this battery deal, through the heat of the argument, I told him to get off the premises and he told me he was going to have the lease cancelled, and that is the way it remained.

Q. And was that the argument over the Bowers batteries?

A. That is right.

Q. Mr. Pollock, would you state your approximate gallonage during the period when you were in business? That covers quite a bit of time, but—

A. Well, from approximately 50,000 to 80,000, per month.

Q. 50,000 to 80,000 gallons monthly?

A. It rose, it averaged, I would say, close to 65,000 throughout the time I was there.

Q. Were you one of the largest dealers in the Chester area?

A. I think so.

Q. Did you do any business on credit?

A. Credit? Personal or—

Q. I am referring to Atlantic credit cards.

692 A. Yes, quite a bit.

Q. And were you limited on such sales to sponsored TBA items?

A. Yes.

Mr. Thompson: I object to that. It calls for a construction of the agreement. There is no such restriction in the agreement.

Would you read the question, please?

(Question and answer read.)

Hearing Examiner Kolb: The objection will be overruled. It will stand.

Mr. Kelaher: Re-state your answer, Mr. Pollock.

The Witness: Yes, I said.

By Mr. Kelaher:

Q. After the change-over to Goodyear TBA, the only TBA products you could sell on Atlantic credit cards were Goodyear TBA products?

Mr. Thompson: That is objected to for the same reason.
Hearing Examiner Kolb: Overruled.

By Mr. Kelaher:

Q. Mr. Pollock, after the change-over to Goodyear TBA, who was your primary supplier of accessories?

A. Ed Parris.

Q. And did you purchase other accessories from 693 other local suppliers?

A. Yes, I did.

Q. Would you name some of them?

A. Chester Auto Parts.

Q. Where are they located?

A. In Chester, on 9th—

Q. That is all right. And the next one?

A. Berrodin Auto supplies in Philadelphia, Lee tires and Bowers batteries, Auto Parts and Radiator, and Delaware County Motor Parts.

Q. Mr. Pollock, are you familiar with the Delaware County Gasoline Dealers' Association?

A. Yes. In fact, I was one of the first presidents.

Q. You were the first president?

A. One of the first. I mean, it had been in effect, I believe, in 1935 or 1936, and then it was in abatement until 1944, I think, and then it was re-activated then and that is when I became president.

Q. And who belonged to the Association?

A. Why, I would say close to 50 percent of the dealers in Delaware County.

Q. Including Atlantic dealers?

A. Atlantic, Esso, everyone.

Q. And what was the purpose of the Association?

A. To help the gasoline dealers in any way possible.

694 Q. In what respect?

A. In every respect, in trying to keep the companies from riding roughshod over all the dealers.

Q. And by companies, you are referring to various oil companies, including Atlantic Refining Company?

A. That is right, all of the oil companies.

Q. Now referring back to the change-over meeting, the luncheon, dinner, or whatever it was, at which you were advised of the change-over by Atlantic to Goodyear TBA, were other Atlantic dealers present at that meeting?

A. Oh, yes, I believe it was two territories. That is the Chester territory and I imagine it was the Delaware County territories, there are two or three salesmen's territories involved in there, I think.

Q. So there were quite a number of Atlantic dealers present?

A. That's right.

Q. Do you recall where that meeting was held?

A. I think, I am not sure, but we had so many meetings, quite a few meetings, but I think it was out on 69th Street, at— (After pause.)

Q. Would the restaurant be Kostik's? Would that refresh your recollection?

A. That is right.

Q. And based on your own observation and knowledge, after that announcement, did other Atlantic dealers in 695 your area change over to Goodyear TBA?

A. As far as I know of, quite a few did.

Q. Would you say the majority of them did?

A. Yes.

Mr. Kelaher: Nothing further, your Honor.

Cross-Examination by Mr. Thompson.

Q. Mr. Pollock, you had a lot of friends in Atlantic, didn't you?

A. Oh, definitely, everyone.

Q. You didn't mention Joe Connelly, who was your salesman the last couple of years after Vayda left?

A. That's right.

Q. And he was a very good friend of yours?

A. He was, yes.

Q. Now when you left the station, you left for the purpose of taking a tap room in Chester?

A. That is right. A tavern, please.

Q. Excuse me. I was going to ask you the address. Next time I get through Chester, I want to stop in.

A. I have had a lot of requests for my address for stopping in, and if all the people stopped in, I would have to enlarge my place. So far, I haven't.

Q. You will recall your lease had a cancellation provision whereby before the end of any year you could 696 notify Atlantic of your desire to leave?

A. That's right.

Mr. Thompson: I ask that this document be marked for identification as Respondent's exhibit A-3.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: The document will be marked Respondent's Exhibit A-3.

(The document referred to, was marked Respondent's exhibit A-3 for identification.)

By Mr. Thompson:

Q. Mr. Pollock, you remember this letter, of course? I am showing you Respondent's exhibit A-3 for identification.

A. Yes.

Q. Yes?

A. Yes, I do.

Q. This letter was sent special delivery registered by you wasn't it, attention Mr. Walters?

A. Right.

Q. And in addition to that, didn't you drop in at Atlantic and have a pleasant farewell session with Mr. Nelson and Mr. Walters?

A. Yes.

Q. And there was no hard feeling about your termination at all?

A. No, none at all.

697 Q. As a matter of fact, Atlantic was very sorry to lose you, weren't they? Didn't they so express themselves?

A. I thought I felt that feeling, and was glad of it.

Mr. Thompson: That is all.

Mr. Correa: I have no questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Thank you, Mr. Pollock. You are excused.

(Witness excused.)

Mr. Dias: I would like to call Mr. Kernaghan.

THOMAS J. KERNAGHAN was thereupon called as a witness for the Commission and having been duly sworn, was examined and testified as follow:

Direct Examination by Mr. Dias.

Q. Will you state your name and business address for the record?

A. Thomas J. Kernaghan.

Q. And your business address?

A. 1627 Fairmont Avenue.

Q. And the name of the company?

A. Rotzell Company.

Q. Is that a branch store of the Rotzell Company?

A. That is the main office, 1627 Fairmont.

698 Q. That is the main office?

A. That's right.

Q. How long have you been employed by Rotzell?

A. Approximately 12 years.

Q. In what capacity?

A. Salesman.

Q. Do you sell the full Rotzell line?

A. That is right.

Q. Were you employed in the TBA business prior to the time that you were employed by Rotzell?

A. Yes.

Q. For how many years?

A. Oh, I would say 12 to 15.

Q. What is your sales territory, Mr. Kernaghan?

A. South Philadelphia.

Q. Do you solicit service stations?

A. Yes, we do.

Q. Are there any Atlantic service stations in your sales territory?

A. Yes, there are.

Q. Do you solicit their business?

A. About four I believe I solicit now.

Q. Do you know how many there are in your territory?

A. I would say approximately 12.

Q. You say you solicit four now. When did you
699 discontinue soliciting the others?

A. A number of years ago.

Q. Can you tell us about how many years ago?

A. About four.

Q. Why did you discontinue soliciting their business?

A. Well, due to the fact that it seemed that they were more or less compelled to buy from the distributor, their own distributors.

Q. Do these stations carry TBA supplies?

A. Yes, they do.

Q. Do you recall the brands that are advertised by the stations?

A. Well, there is—you mean in the way of tires and that?

Q. Tires, and batteries?

A. Well, of course they used to have Lee tires and now I understand it is the Goodyear tire, and DuPont chemical line, Prestone antifreeze.

Q. Have you observed that advertising about those stations?

A. Yes, I have.

Q. You say you sell to four. What products do you sell to them?

A. Mostly antifreeze today.

Q. Today. Did you sell anything other than antifreeze to them heretofore?

A. Yes, I used to be able to sell them the DuPont chemical line.

700 Q. How long ago was that?

A. That has been several years ago.

Q. Can you recall the names of those stations that were purchasing—

A. (Interposing.) There has been quite a change of dealers, and consequently I don't recall their names now. But one in particular I do know that I get antifreeze business from is the Previti. They had two stations, one at 18th and Dickison and the other at 17th and Passyunk.

Q. You sell him antifreeze today, is that correct?

A. I sold him last season.

Q. Yes, but I mean currently.

A. Yes, sir.

Q. Did you sell him any other products prior to current?

A. No, I didn't sell them anything.

Q. Have you solicited all these stations at one time or another?

A. Yes, I have.

Q. How often do you call on the stations you are now selling?

A. About every two weeks.

Q. Do you solicit business, battery business?

A. Well, we would like to, but I can't sell them.

Q. How about your accessories, fan belts, hose filters?

A. That is tied up in their TBA set-up.

Q. Do you attempt to sell those products to them?

701 A. We tried to, yes. I have tried to.

Q. What do you sell to those stations that you are now selling to, mainly?

A. Well, a few of them are doing repair work, and we sell them brakes, fuel pumps, in other words—

Q. (Interposing.) Are they so-called hard parts, is that what you mean?

A. Yes, sir.

Q. Do those stations handle TBA?

A. Yes, they do.

Q. What TBA products do they carry in those stations?

A. Well, tires, batteries and accessories.

Q. But what brand?

A. Well, of course, as I said before, it was Lee and I believe it is Goodyear batteries now and Goodyear tires, and—

Q. Do they have—excuse me, I am sorry. Go on and finish.

A. I believe, if I recall correctly, Thermoid belts, Goodyear belts today—they changed over from Thermoid to Goodyear.

Q. Do they advertise those products, Goodyear products, about the station?

A. Yes. I mean, they are on display and I would say they advertise them.

Q. Do they have banners or decals on the windows?

A. Yes.

702 Q. What store do you work out of in the Rotzell company?

A. The 18th and Christian Street store.

Q. So that the address you gave us earlier was the home office of Rotzell?

A. That is right.

Q. But you are working out of the 18th and Christian, is that right?

A. That is correct.

Q. And do you have truck service or delivery service?

A. Yes, we do.

Q. Do you, Mr. Kernaghan, know who the Goodyear supplier is in your sales territory?

A. I believe it is Ellwood Kieser.

Q. And are your products, your batteries, accessories, are they competitive with the products of Goodyear sold by Mr. Kieser?

Mr. Corréa: I object to that question on the ground that it calls for a conclusion and judgment of the witness, and there is no proper foundation for it.

Hearing Examiner Kolb: The objection is overruled.

Mr. Dias: You may answer.

A. I would say they are, yes.

Mr. Dias: That is all.

703

Cross-Examination by Mr. Ballard.

Q. Mr. Kernaghan, I think you are with the same supplier as Mr. Heller, aren't you?

A. Yes, that is right.

Q. I think Mr. Heller told us that he served all kinds of customers; do you serve different classes of customers, too?

A. That is my privilege. I can solicit any sort of business, service stations, car dealers—

Q. (Interposing.) How about fleet accounts? Do you serve them?

A. Fleet accounts, yes, I have a few of those.

Q. What are the majority of your customers, what class?

A. Independent repair shops.

Q. You have some garages, too? Is that the same thing?

A. Yes.

Q. And some dealers, car dealers?

A. That is right.

Q. How many service stations all told?

A. Well, I have sorta gotten away from calling on service stations, due to the competition. I would say I have about 10 or 12 service stations today.

Q. How many customers all told?

A. About 175.

Q. And the area is generally in South Philadelphia?

704 A. South Philadelphia, yes.

Q. Are you free to go into other areas, if you wish?

A. With the permission of the office.

Mr. Ballard: I don't think I have any further questions.

By Mr. Correa:

Q. Mr. Kernaghan, you don't sell tires, do you?

A. No, we do not.

Q. Now you say you have 12 Atlantic stations in your territory?

A. How is that?

Q. Did you say you had 12 Atlantic stations or 12 service stations in your territory?

A. I call on about 12 service stations, including Atlantic.

Q. All told?

A. Yes.

Q. How many Atlantic?

A. I would say about 4.

Q. You say you sell four of the 12 service stations?

A. I have 12 service stations, yes.

Q. Do you know what line of tires the Atlantic service stations in your area sell?

A. Goodyear.

Q. Do you know whether any of them sell Lee tires?

A. Today, I don't know. I mean I know they used to sell Lee.

705 Q. You don't know whether they sell them still today or not, any of them?

A. I wouldn't be in a position to say.

Q. You are not really much interested in tires, are you?

A. That is right.

Mr. Correa: No further questions.

Hearing Examiner Kolb: Anything further?

Mr. Dias: I think there is a little confusion created by cross-examination.

Redirect Examination by Mr. Dias.

Q. I think you stated you sold to about 175 customers of all types?

A. That is right.

Q. And you call on about 10 or 12 service stations of all types?

A. That is right.

Q. And of that number about four are Atlantic stations, is that correct?

A. That is right.

Q. At any time since you have been employed by Rotzell did you sell to more service stations than these 10 or 12?

A. Yes, I used to call on quite a few service stations.

Q. How did the number of service stations at that time compare to the total number of customers in your sales territory—

706 Mr. Correa: (Interposing.) I object to the question unless at that time be fixed. We have no time.

Hearing Examiner Kolb: Try to fix the time, Mr. Dias.

By Mr. Dias:

Q. When you stated that you called on more service stations at one time, can you give us an approximate date on that?

A. Well, up until the time the oil companies came out with the TBA set-up, we were able to get some business from most any of the service stations.

Q. Approximately what time, when was that, do you recall?

A. I would say it was about eight years ago.

Q. About eight years ago?

A. Yes.

Q. All right then. Prior to that period of eight years ago, did you sell to more service stations than you sell to now?

A. That is right, yes, sir.

Q. And did you sell to more Atlantic service stations at that time?

A. No, I wouldn't say so.

Q. You did not?

A. No.

Mr. Dias: That is all, your Honor.

Mr. Ballard: No further questions.

Mr. Correa: No further questions.

707 Hearing Examiner Kolb: That is all, Mr. Kernaghan.

(Witness excused.)

Mr. Dias: I would like to call Mr. Vick.

JOHN J. VICK was thereupon called as a witness for the Commission and having been duly sworn, testified as follows:

Direct Examination by Mr. Dias.

Q. State your full name and business address for the record please?

A. John J. Vick, 5913 Ridge Avenue, Philadelphia Wholesale Distributors, Incorporated.

Q. How long have you been employed by Philadelphia Wholesale Distributors?

A. Approximately 20 years.

Q. And in what capacity?

A. Salesman.

I wish to state that as a salesman, approximately 12 years.

Q. And prior to that time?

A. Inside.

Q. And what is your sales territory?

A. Primarily the Northeast, Frankford, Richmond, Kensington, Mayfair.

708 Q. Northeast Philadelphia?

A. That is right.

Q. What type customer do you solicit?

A. I solicit the service stations, fleet accounts, industrial accounts, and car dealers.

Q. Among your service stations, are there any Atlantic stations?

A. Yes, there are. There are, I believe—a rough estimate—25 Atlantic stations.

Q. In your sales territory?

A. That is right.

Q. And of that number, do you sell to any of them?

A. I sell to what I term an independent Atlantic sta-

tion, the person that owns his own property, approximately 10.

Q. What type product do you sell to him or to that type of station?

A. We sell him the entire TBA set-up, which includes batteries, polishes, antifreeze, oil, Kendall 2000 mile oil.

Q. Are there other type Atlantic stations in your territory?

A. Yes, they are what I call a lessee Atlantic station, one that pays rent to the Atlantic Refining Company?

Q. And you sell TBA products to those stations?

A. No, I don't.

Q. Do you attempt to sell to them?

710 The Witness: Referring to an instance, I made a
call this morning on Mr. Scotty McArthur at Lawn-
711 dale and Erie Avenue. I stopped in and asked for a
Prestone antifreeze order. Mr. McArthur stated he
has already placed his order and I asked him with whom
and he said Atlantic Refining Company.

I asked him if he would buy some Exide batteries and he said he is not allowed to buy them. I offered him a polish—if it is in order, I will also say the polish was \$4.00 below the price of Atlantic's price, per case—and he said "I wish I could buy those deals, but I am not allowed to."

I also mentioned the fact I am going down to a hearing and he says "I wish you a lot of luck." He says, "I hope you can stop those fellows." That is an instance.

Another instance, I called on Mr. Ed Ringenary, Broad and Walnut Streets, and this was about two months ago. I call on him occasionally, and I asked him to buy Prestone, Exide Kendall, and he says, "Are you out of your mind? Why, they would cancel my lease out immediately." He says, "They even have spooks in the territory." I said, "What do you mean by spooks?" He says, "Why they

have fellows coming in here and trying to offer merchandise at lower prices just to see if you would buy from someone else." He again stated that he would even testify, if called, against the Atlantic Refining Company. He again wished us a lot of luck and wished that we would organize to fight against Atlantic, against the pressure of their purchases.

I think that is sufficient.

By Mr. Dias:

Q. You state that you sell regularly to independents. What do you sell to them?

A. To the independent, a fellow that owns his own property, we sell him Kendall oil, we sell him Exide batteries, we sell him Prestone antifreeze, we sell him AC sparks, filters, Fram filters, and I would say a hundred percent of what he pleases to buy.

Q. These leased stations in your territory, do you recall whether or not they handle TBA products?

A. Yes, they do. They handle the same lines we distribute. They carry DuPont chemicals, they carry Johnson's chemicals, they carry Prestone antifreeze, they carry AC spark plugs, and filters, yet we are unable to secure their business.

Q. What type tires do they carry, do you recall?

A. We carry the Goodrich line of tires and we are not in a position to do a job with Goodyear because of the tire set-ups with the refining companies. We more or less do very little on tires.

Q. I was referring to the tires carried by these leased Atlantic stations in your section?

A. They carry the Goodyear tires.

Q. Batteries?

A. They carry Goodyear batteries.

713 If you wish another instance, I will give you another instance of an account—

Mr. Correa: (Interposing.) Is the examination being conducted by the witness or by counsel, may I inquire?

The Witness: I have been asked for instances; I offer another instance.

Hearing Examiner Kolb: He is answering as he thinks of them.

The Witness: I can't offer everything within five minutes, so I am just proceeding with the interrogation and the questions asked.

By Mr. Dias:

Q. Do you recall any other instances?

A. Mr. Bob Provost, Jr., Wifaker and Hunting Park Avenue, I went in to offer him or solicit him. DuPont anti-freeze business, and he says: "What do you want, the roof to cave in on me? I would lose my lease immediately." So I asked him if he did any business with the jobbers, and he says very little. "The only time I give any business to a jobber is when I am out of a certain part that Atlantic doesn't carry and I will call on a jobber."

Q. Can you tell us when that occurred, when that conversation with Mr. Provost occurred?

A. This was about March.

Q. This year?

714 A. Yes.

Q. Mr. Vick, do you know who the Goodyear supplier is in your territory?

A. There are two that I know of, Ellwood Kieser and Harvey George.

Q. Harvey George?

A. Yes, as he is referred to.

Q. Can you give their addresses? We have the address of Ellwood Kieser. How about Harvey George?

A. He is up in the Northeast somewhere. I don't know his address. He covers the Northeast territory.

Q. If you know, Mr. Vick, do these Goodyear suppliers, Kieser and George, supply Atlantic stations?

A. Yes, they do.

Q. And if you know, do they both cover the same territory or different territories?

A. I don't know, I don't believe so. Ellwood Kieser operating, I believe, out of Fairmont Avenue covers more or less the downtown area, whereas Harvey George possibly covers from Erie Avenue North or approximately that territory.

Q. Mr. Vick, are your batteries and accessories and other items in TBA line in competition with Goodyear batteries and accessories sold by Kieser and George?

A. Yes.

Mr. Correa: Give me a chance to object. I object, 715 your Honor, on the grounds I have heretofore stated, that it calls for a conclusion of the witness, it calls for the operation of the witness' mind, and is an objectionable question on every traditional ground, as I have stated in a court of law with respect to this type of question.

Hearing Examiner Kolb: Overruled.

Mr. Dias: Have you answered that?

Mr. Correa: Yes, I think he answered before I objected.

The Witness: I shall bring up an instance again before even this question was brought up, where in calling on Mr. McArthur, speaking of competitive prices, I offered him a case of polish \$4.00 cheaper than Atlantic bills him for it, and he still couldn't buy it.

By Mr. Dias:

Q. What type of polish was that?

A. Johnson's polish.

Q. What type does he carry?

A. He carries Johnson's and DuPont's.

716 Mr. Dias: That is all.

Cross-Examination by Mr. Correa.

Q. Mr. Witness, do you sell tires?

A. We distribute tires, I don't sell them.

Q. Do you?

A. No, I don't.

Q. Have you ever sold a tire?

A. Yes.

Q. When?

A. Only to accommodate—I can't specifically—

Q. (Interposing.) When? Can't you answer my question?

A. I have no definite date of selling a tire.

Q. Can you give me an approximation?

A. An approximation, about one month ago.

Q. And how many tires have you sold in the last year?

A. About a dozen.

Q. Last five years?

A. A couple of dozen.

717 Q. And in the last ten years?

A. A couple dozen.

Q. So that means, I take it, that in the five years preceding the last five years, you sold none?

A. That's right.

Q. What tires have you sold, sir?

A. Goodrich.

Q. In every instance?

A. That is right. I also wish to state that I didn't sell to Atlantic dealers, if that is the question.

Q. Mr. Witness—

A. (Interposing.) You asked the question if I sold tires and I wish to state I didn't sell to Atlantic stations.

Mr. Correa: I think, Mr. Examiner, it would be helpful if the witness might be told to confine himself to answering questions responsively; we would get on faster.

Hearing Examiner Kolb: Just answer the questions that are asked.

The Witness: Yes, sir.

By Mr. Correa:

Q. Now sir, you have mentioned two or three dealers, Atlantic dealers, with whom you have had conversations, you say, which you related in the record?

A. That's right.

Q. And I take it you have supplied, prior to your 718 appearance here, supplied counsel for the Commission with the information concerning those dealers and what they had to say about this matter?

A. What information are you asking about?

Q. The information you gave us on the record a while ago.

A. No, how could I supply them when I made that call this morning. I didn't see these gentlemen this morning.

Q. The question was, did you or didn't you. You say no?

A. No, I didn't.

Q. All right, you have answered my question. Now you say you saw certain of these dealers, one I think you said two weeks ago and another two months ago, didn't you?

A. I didn't get that question.

Q. Did you tell us of a conversation you had with an Atlantic dealer two weeks ago and of another conversation you had with another Atlantic dealer two months ago?

A. That's right.

Q. Is it not the fact that the Atlantic dealer who, according to you, said he was willing to come and testify in this proceeding, was the one you interviewed two months ago?

A. That's right.

Q. Now did you advise counsel for the Commission of the willingness of this gentleman to come and testify in this proceeding?

A. This particular gentleman, yes.

719 Q. You did?

A. Yes, sir.

Q. Now did you advise them also of the conversation you had with the gentleman whom you interviewed, according to you, two weeks ago?

A. No, I didn't see the gentlemen two weeks ago.

Q. Now sir you said that the Atlantic stations in your territory are supplied by Ellwood Kieser and Harvey George?

A. That is right, sir.

Q. And they are Goodyear dealers, are they?

A. That is right.

Q. And they are in competition with you?

A. In what respect, sir, sales or—

Q. Sales, yes.

A. Yes.

Q. No doubt, is there?

A. Sales, yes.

Q. And if this proceeding would result in their competition with you being rendered less effective, that would be a consummation devoutly desired by you, would it not?

A. I think that is more or less the purpose of this meeting.

Mr. Correa: Thank you.

Mr. Ballard: No questions.

720

Redirect Examination by Mr. Dias.

Q. In reference to those men, Ellwood Kieser and Harvey George, did they offer you the type competition that you can't meet individually?

A. No, we offer the same things, there are standard prices. However, they are not permitted to buy from us, that is, the Atlantic service stations.

Q. Do you sell to other type service stations in your sales territory?

A. Yes, I do.

Q. And Mr. Kieser, Mr. George, are they competitive factors in those?

A. No, just in Atlantic stations is their—more or less their field and territory.

Q. As a matter of fact, do you know, if you know, do those two suppliers sell to any stations or dealers other than Atlantic stations?

A. None that I know of, sir.

Mr. Dias: That is all.

Recross Examination by Mr. Correa.

Q. Would you say they didn't, or you just don't know?

A. None that I know of.

Q. You just don't know?

721 A. None that I know of.

Q. You just don't know whether they did or not?

A. I say none that I know of.

Q. Would you mind answering the question?

A. What is the question?

Hearing Examiner Kolb: The witness answered the question.

Mr. Correa: I submit he hasn't, but I am not going to spend any more time—

Hearing Examiner Kolb: (Interposing.) There is no use in spending a half hour arguing about that.

Mr. Correa: I am not going to argue with this witness. He seems to be a frustrated lawyer,

The Witness: I wish I were.

Mr. Correa: That is all.

The Witness: Am I excused, sir?

Hearing Examiner Kolb: Yes.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn until two o'clock.

(Whereupon, at 12:40 p.m. the hearing was adjourned to reconvene at 2:00 p.m. the same day.)

(2:05 p.m.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: Mr. Examiner, may I refer to Commission Exhibit 293-A and B which were received in evidence at the close of the hearing yesterday.

With the permission of staff counsel I desire to add to those exhibits as 293-C and -D the following two documents which are pertinent to the exhibit heretofore offered.

Exhibit 293-C is a letter from Mr. McCreery to Mr. Boor dated October 3, 1952 on the same subject matter as the letter of August 14, 1952, and Exhibit 293-D is a reply from Mr. Boor to Mr. McCreery dated October 7, 1952.

I understand there is no objection.

Mr. Kelaher: No objection.

Mr. Correa: If your Honor please, on the assumption which the proffer of the exhibits which I have not seen relate to the subject matter of 293-A and 293-B on behalf of Goodyear they are objected to on the ground that the whole subject matter of these four exhibits relates wholly and solely to dealings between Atlantic Refining Company and the Firestone and has nothing to do with Goodyear; therefore, is not material.

Hearing Examiner Kolb: Exhibits 293-C and -D will be received into evidence subject to the motion to strike 723 by Goodyear.

(The documents referred to were marked for iden-

tification as COMMISSION'S EXHIBITS 293-C and 293-D and were received in evidence.)

Mr. Thompson: May we withdraw these two documents from Atlantic's files so that we may substitute photostatic copies? That may be done?

Hearing Examiner Kolb: Yes.

Proceed.

Mr. Kelaher: I would like to recall Mr. Hinderscheid to the stand, please.

Mr. Thompson: Off the record for a moment, sir?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

W. F. HINDERSCHIED resumed the stand and testified further as follows:

Mr. Kelaher: Before questioning Mr. Hinderscheid further, Mr. Examiner, there were three exhibits offered into evidence yesterday, marked for identification yesterday, identified as CX-290-A through I, CX-291-A through C, and 292-A through C. Counsel for the respondents asked for an opportunity to examine the documents before deciding whether there would be any objection.

724 I now offer the documents into evidence—or at least

I offer that portion of the documents which relate to AR accounts, Atlantic Refining accounts, and not to that portion of the documents which relate to DAR accounts.

Mr. Thompson: I object to any partial offer of the exhibits. I have no objection if they are offered as they appear.

Hearing Examiner Kolb: The documents will be received in evidence as Commission Exhibits 290-A to -I, 291-A to -C, and 292-A to -C.

(The documents referred to, heretofore marked for iden-

*ification COMMISSION'S EXHIBITS 290-A through -I, 291-A through -C, and 292-A through -C, were received in evidence.)

Mr. Kelaher: Your Honor, at this time I would like to have the following documents marked for identification:

For identification as CX-294, a list of Lee—

Hearing Examiner Kolb: You have already used 294 on your statement for Mr. Matthews this morning.

Mr. Kelaher: I'm sorry. Thank you.

I would like to have marked as CX-295 a list which is a list of Lee factory branches as of January 1, 1950.

(The document referred to was marked for identification as Commission's Exhibit 295.)

Mr. Kelaher: For identification as Commission Exhibit 296 a list of Lee factory branches set up in the

Atlantic Refining Company marketing area subsequent to January 1, 1950, together with the month and year each branch began operations.

(The document referred to was marked Commission's Exhibit 296 for identification.)

Mr. Kelaher: As Commission Exhibit 297-A and -B the names and positions of Lee personnel referred to in Items 1 to 10 inclusive of Specification I of the subpoena duces tecum served upon Mr. Hinderscheid.

(The documents referred to were marked Commission's Exhibits 297-A and 297-B for identification.)

Mr. Kelaher: And 288-E—

Hearing Examiner Kolb: You have used 288—do you mean 298?

Mr. Kelaher: Excuse me, there is a reference made in CX-288 series to a memorandum and Mr. Hinderscheid was requested to furnish that memorandum so I think in order to keep the exhibits in proper order it should properly go with the 288 series.

Hearing Examiner Kolb: All right.

Mr. Kelaher: I call your Honor's attention to Commission Exhibit 288-C, the fourth paragraph of that letter from Mr. Hinderscheid to Mr. Dwight Colley of Atlantic, he states: "I am attaching a copy of the memorandum 726 dum" etc., and this CX-288-E is the memorandum referred to.

(The document referred to was marked Commission's Exhibit 288-E for identification.)

Mr. Kelaher: I now offer Commission Exhibits for identification 295, 296, 297-A and 297-B, and 288-E into evidence.

Mr. Thompson: At the moment, sir, I am wholly confused about what the exhibits are because I couldn't hear Mr. Kelaher. I will have to check with him.

If your Honor please, Atlantic has no objection to the CX-295, CX-296, CX-297-A or 297-B. So far as 288-E is concerned I have no objection if the offer is limited to the purpose of showing what complaint was registered by Lee with Mr. Colley of the Atlantic. If, on the other hand, the document is offered for the purpose of proving the facts stated therein, such facts are obviously hearsay and in so far as the author of the document, Mr. McCreery is concerned, and in a number of instances involve double or triple hearsay.

Mr. Correa: If your Honor please, the respondent Goodyear does not object to any of the proffered exhibits with the exception of Exhibit 288-E for identification and that is objected to by Goodyear on the ground that it appears from the face of the exhibit that this has to do wholly and solely with dealings between Atlantic and Firestone to which Goodyear was not only not privy but was in 727 deed a stranger and it is immaterial and irrelevant in so far as any issue in this case concerning the respondent Goodyear Tire & Rubber Company is concerned.

Hearing Examiner Kolb: That applies only to 288?

Mr. Correa: Only to that one, if your Honor please. The others we have no objection to.

Hearing Examiner Kolb: May I see 288-E, please?

(The document was handed to the Examiner.)

Hearing Examiner Kolb: The document 288-E will be received in evidence subject to the qualifications specified by counsel for Atlantic and subject to a motion to strike by Goodyear.

(The document referred to, heretofore marked for identification COMMISSION EXHIBIT 288-E, was received in evidence.)

Mr. Kelaher: Your Honor, would you please state the qualification or have the qualification reread by the reporter?

Hearing Examiner Kolb: All right, will the reporter read the qualification?

(The reporter read the following statement:

"Mr. Thompson: * * * If, on the other hand, the document is offered for the purpose of proving the facts stated therein, such facts are obviously hearsay 728 and in so far as the author of the document, Mr. McCreery is concerned, and in a number of instances involve double or triple hearsay.")

Hearing Examiner Kolb: There being no objection to documents 295, 296 and 297-A and -B they will be received in evidence.

(The documents referred to, heretofore marked for identification COMMISSION EXHIBITS 295, 296, 297-A and 297-B were received in evidence.)

Direct Examination by Mr. Kelaher (Resumed).

Q. Mr. Hinderscheid, will you please state Mr. McCreery's position with the company?

A. Now or then?

Q. E. W. McCreery.

A. At what time?

Q. As of July '51.

A. He's Vice President and Regional Sales Manager, what is known in our organization as Region Number 4.

Q. And where was he located?

A. He was located in the General Offices, Lee Rubber & Tire Corporation, Conshohocken.

Q. And was he in charge of the regional offices in various parts of the country?

A. He was in charge of branch offices in certain 729 parts of the country.

Q. And were certain of such branch offices located in Pittsburgh, Altoona and Erie, Pennsylvania?

A. Yes.

Q. And the information stated by him in CX-288-E was based on reports from those branches, is that correct? (Handing document to the witness.)

A. I assume that they were, but I have no way of telling.

Q. That would be the normal operation procedure, wouldn't it?

A. The normal procedure was for him to get this information from the branch manager and the branch manager probably in turn received the information from the sales representative covering that particular territory.

Q. I see.

And that information contained in CX-288-E would be based on that procedure, is that correct?

A. That's right.

Mr. Kelaher: Your Honor, on the basis of Mr. Hinder-scheid's statement we submit that Commission Exhibit 288-E is qualified for introduction into evidence as a record made in the regular course of business and should be admitted without qualification.

Hearing Examiner Kolb: This appears to be a report from Mr. McCreery as to information that came to 730 him from other sources and reported to Mr. Hinder-scheid. I think that needs the qualification.

Mr. Kelaher: It is a report based on salesmen coming under the jurisdiction of Mr. McCreery.

Mr. Thompson: Are you through, Mr. Kelaher?

Mr. Kelaher: Yes. Does Mr. Thompson have anything further to say about CX-288-E or have you ruled finally on it?

Mr. Thompson: I understood your Honor ruled.

Hearing Examiner Kolb: I ruled on it.

By Mr. Kelaher:

Q. Mr. Hinder-scheid, I just want to ask you whether or not it would be possible to get the names of the salesmen who were in the Wilmington Branch in April 1950? I'm referring to Commission Exhibit for identification 275-A through -H and asking if any of those salesmen are still with Lee, if you know?

A. To the best of my knowledge, why, none of them are with us today.

Q. None of them?

A. No.

Q. And could you furnish us not right now but within the next day or so with the names of the Lee salesmen who were in the Wilmington branch at that time?

A. 1950?

Q. April 1950.

731 A. I don't know whether I can get it within the next day or so because you are going back in the .

records seven to eight years and I don't know just how available those records are.

Q. Say before Friday?

A. Yes. I think we could get them within two or three days.

Q. Thank you.

Mr. Kelaher: Your Honor, I just would like that the record to show that I do have—we do have an objection to the introduction of CX-288-E with the qualification appended.

Hearing Examiner Kolb: Do you want to withdraw it?

Mr. Kelaher: No, I just want to have the objection noted in the record.

Hearing Examiner Kolb: All right.

Mr. Kelaher: We have no further questions of Mr. Hinderscheid.

Mr. Thompson: May I have a second to confer with counsel, sir?

Hearing Examiner Kolb: All right.

Cross-Examination by Mr. Thompson.

Q. Mr. Hinderscheid, I was not able, sir, with the documents which I have read with some care to determine the extent to which your organization back in 1950 and 1951 operated through distributors as distinguished from your company branches.

732 Q. Did you at that time have a number of independent distributors around the country?

A. Yes.

Q. And you do at the present time also, do you not, sir?

A. Yes, sir.

Q. The independent distributors—take Philadelphia, if I may for an example—are today directly soliciting with oil company service stations, are they not?

A. Distributors?

Q. Yes.

A. Our distributors?

Q. Yes.

A. Yes, I would imagine so.

Q. And were they doing that—

Mr. Kelaher: (Interposing.) Your Honor, I move the answer be stricken unless he knows of his own knowledge. He said he imagines so.

Hearing Examiner Kolb: Read the question and answer.

(The reporter read the following questions and answers:

“Question: The independent distributors—take Philadelphia, if I may for an example—are today directly soliciting with oil company service stations, are they not?

733 “Answer: Distributors?

“Question: Yes.

“Answer: Our distributors?

“Question: Yes.

“Answer: Yes, I would imagine so.”)

Hearing Examiner Kolb: The answer may stand.

By Mr. Thompson: . /

Q. Of course, sir, you qualified your answer because you wouldn't know how your distributors were soliciting?

A. I wouldn't have any way of knowing that?

Q. They don't report to you who their customers are?

A. No.

Q. Now, were your independent distributors operating in the same way in 1950 and 1951?

A. Yes, they were soliciting dealer business.

Q. That would have been so in Newark and Erie, Wilmington, Baltimore, in fact, in places anywhere in the country, would it not?

A. Yes.

Q. So that referring, sir, to the portions of the Exhibits 290, 291 and 292 which refer to sales in various regions—

A. Yes, that's right.

Q. To Atlantic accounts, you were, I assume, merely reporting the sales which had been made by your own factory branches, is that not so?

734 A. That's right.

Q. And you would not either in 1950 or 1951 or today know the extent to which the various independent distributors in the various regions were also selling to Atlantic accounts?

A. It wouldn't be possible for us to know.

Q. It would be impossible to know.

Mr. Thompson: Thank you very much, sir; that's all I have.

Mr. Correa: I have nothing, sir.

Hearing Examiner Kolb: Further questions?

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That's all, Mr. Hinderscheid. Thank you.

(Witness excused.)

Mr. Dias: I call Mr. McCandless.

ROBERT H. McCANDLESS was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Dias.

Q. Mr. McCandless, will you state your full name and spell your last name for the reporter.

A. Robert H. McCandless—Mc capital C-a-n-d-l-e-s-s.

Q. And your business address?

735 A. 8 East Ninth Street, Chester, Pennsylvania.

Q. And the name of your company?

A. Auto Parts and Radiator Company.

Q. What type of business is Auto Parts and Radiator, Mr. McCandless?

A. In the automotive replacement parts and equipment line.

Q. And does that include TBA products?

A. And TBA also.

Q. Do you handle tires?

A. Yes, sir.

Q. You do handle tires?

A. Yes, sir.

Q. What brand tire do you handle?

A. Inland tires.

Q. And your batteries?

A. Delco batteries.

Q. And can you name some of the more common accessories such as filters?

A. AC products, a complete line, Alemite CD-2.

Q. How about belts and hose?

A. Gates belts and hose, National Carbon products.

Q. What is the trade area of your company, Mr. McCandless?

A. We cover from the Delaware River as far as the Lincoln Highway.

Q. Lincoln what?

736 A. Lincoln Highway, and from the Philadelphia area as far as Delaware.

Q. Does the company employ salesmen?

A. Yes, sir.

Q. How many of them?

A. Three.

Q. And what kind or what class of customers are solicited by the company?

A. Garages, independent garages, service stations, fleets, industrial plants, car dealers.

Q. Does the company have delivery trucks?

A. Yes, sir.

Q. How many?

A. Approximately five.

Q. Five?

A. Five. Yes, sir.

Q. How are your salesmen compensated, salary or commission?

A. Strictly commission.

Q. Now, how long have you been employed by the company, Mr. McCandless?

A. Eight years.

Q. And of that time, have those eight years been as a salesman?

A. Yes, sir.

Q. What is your sales territory?

737 A. The Western part of Chester and as far as the Delaware State Line.

Q. Do you solicit the same type of customers as your company as a whole solicits?

A. Yes, sir.

Q. Or do you specialize in any one particular—

A. (Interposing.) No.

Q. You just solicit them all. I take it then, you solicit service stations?

A. Yes, sir.

Q. Are there any Atlantic service stations among your territory?

A. I have 12 in my territory.

Q. And do you solicit all of them?

A. Approximately seven.

Q. Approximately what?

A. Seven.

Q. What about the other five?

A. Well, I don't call on them any more.

Q. When did you last call on them?

A. Approximately two years ago.

Q. And why did you discontinue it?

A. Couldn't get any business out of them.

Q. These 12 stations in your territory, do they handle TBA products?

738 A. Yes, sir.

Q. Do you recall what brands they carry?

A. In the Chester area it's Goodyear.

Q. Do you sell in another area too?

A. Just one account that I call on in the Delaware area, he carries Firestone:

Q. Now, these seven that you call on, how often do you call on them?

A. Approximately every two weeks.

Q. And can you tell us what you sell to them?

A. A few oil filters, occasionally a few spark plugs, and small pieces of equipment, and some ignition parts.

Q. I see. By "equipment" is that what it known as hard parts?

A. Well, equipment that they use in the service stations.

Q. Oh, I see, service station equipment.

Now, these five, do you attempt to sell or do you solicit their business on your batteries? Do you attempt to sell them batteries?

A. No.

Q. You do not?

A. No, sir.

Q. Is there any reason for that?

A. Well, I couldn't sell them so I stopped talking about them.

739 Q. That is true with these five or seven stations that you are selling to now, is that correct?

A. Yes, sir.

Q. Or is that true of the five that you stopped calling on?

A. Out of the five I'd say all but one.

Q. All but one is what?

A. That I sell batteries to. That's a rare occasion, I mean, I don't push after them.

Q. Well, what is it that you attempt to sell mainly to those stations, then?

A. Ignition and brake parts.

Q. How about chemicals?

A. Chemicals, some chemicals and some polishes, which is a chemical also.

Q. Are you familiar with the Bert Rehill Atlantic Station?

A. I haven't called on him for a couple of years.

Q. Do you know where they are located?

A. Ninth and Kerlin Street.

Q. In where?

A. Chester, Pennsylvania.

Q. When was the last time you called on them?

A. Well, approximately two years I imagine.

Q. Three years ago?

A. Two years.

Q. Two years. Did you call on that station regularly?

740 A. Pretty regular for a while.

Q. For how long a period?

A. Maybe—approximately two years.

Q. For a year?

A. About two years.

Q. About two years?

A. Yes.

Q. Did you make any sales to that station?

A. I think I made one sale—one or two sales.

Q. And do you have—

A. Myself, actually myself.

Q. I see.

What do you mean by that?

A. Other times, you know they pick it up or call in the store and we give them delivery service on that.

Q. Do you get credit on sales of that kind?

A. Yes, sir.

Q. Do you know how often you called on that station during the year that you were calling on them or the two years?

A. Can I look at this record here?

Q. Are those your company records of calls and sales?

A. Yes, sir.

Q. Yes.

A. Well, I don't have the number of calls here, 12 times during one year.

741 Q. Which year was that?

A. 1954.

Q. And do you have a record of the total amount of sales?

A. \$13.75.

Q. And do you recall what the products were?

A. No, I don't. Prior to that, 1953, there was one sale of \$20.40.

Q. Do you know how often you called on him during that year?

A. No, there's no record here on it.

Q. Does the Bert Rehill station handle tires, batteries and accessories?

A. Yes, sir.

Q. What brand do they advertise on and about the station?

A. Goodyear, I believe.

Q. Now, are you familiar with the John Rehill Station at Fourth and Highland in Chester?

A. Yes, sir.

Q. Do you sell to that station at this time?

A. I haven't called on him since '54. In other words, I stopped calling on him in 1954, the end of '54.

Q. Why did you stop calling on him?

A. I couldn't do too much business with him.

Q. Did you sell him anything in 1954?

A. \$68.67.

Q. And do you know how often you called on him 742 during that year?

A. I only made seven calls on him in that year.

Q. Do you have any information on other stations in your sales territory, Atlantic stations?

A. Yes, sir.

Q. Before we get off the John Rehill station, will you tell us whether or not he handles TBA?

A. Yes, sir.

Q. He does. And what brand of TBA does he handle?

A. Goodyear.

Q. Now, do you have other instances of Atlantic stations in your sales territory that you have called upon?

A. Pardon me?

Q. Do you have other instances of Atlantic stations in your sales territory that you have called upon?

A. Yes, sir.

Q. Would you name them, please?

A. Do you want the amounts or the number of calls?

Q. First I would like to know the name and address of the Atlantic station.

A. Buckingham's Atlantic, Second and Lloyd Streets in Chester.

Q. And do you sell to that station at this time?

A. No, sir.

Q. When was the last time you sold to that station?

743 A. I actually didn't sell him anything, he called the store and ordered it which I get credit for. In 1955 I made 8 calls for \$211.44 worth of business.

Q. A total of eight calls in one year?

A. Yes, sir.

Q. And that was your total annual business?

A. That was a part of a year because I didn't have him for the full year of 1955.

In 1956 there was ten calls for \$381.28.

Q. Did you sell him any batteries?

A. No, sir.

Q. Do you recall what it was that you sold to that station?

A. I imagine brake shoes would be the most important thing, brake shoes and these car rugs that you put on the floors and stuff like that.

Q. Car what?

A. Car rugs.

Q. Buckingham Atlantic Station, is that the name of it?

A. Yes, sir.

Q. Do they carry TBA?

A. Yes, sir.

Q. And what brand TBA do they carry?

A. Goodyear also.

Q. Do you have any other specific instances?

A. Village Green Atlantic Station.

744 Q. Village Green?

A. Village Green Atlantic, that's Concord and Scheivert Roads in Village Green, Pennsylvania.

Q. Now, do you sell to that station at this time?

A. No, he's out of business now; that is he went into another station, I believe, as of last Thursday, I believe he's not there any more.

Q. Well, up until the time that he closed out did you do any business with him?

A. Yes, sir.

Q. Can you tell us how much?

A. 1956, 19 calls, \$786.19.

Q. And how about 1955?

A. Now, that was a new account that I took over. I don't believe he was there in '55. I couldn't say for sure because it is just a new account that I took over from another salesman in 1957—15 calls, \$934.52.

Q. Do you recall what it was that you sold to that station?

A. Ignition, brakes, brake parts.

Q. Any batteries?

A. No batteries.

Q. Filters, chemicals?

A. A few chemicals.

Q. How about filters?

A. No filters.

745 Q. Did he handle TBA in that station?

A. Yes, sir.

Q. What brand TBA did he handle?

A. Goodyear.

Q. Do you have any other instances of stations that you have sold to?

A. S. K. Watson's Atlantic Station, Boothwyn and Meeting House Road, Boothwyn, Pennsylvania.

Q. Have you sold to him this year?

A. Yes.

Q. Is he one of your regular customers?

A. Since the first of this year.

Q. I see. And what do you sell to him?

A. Gates belts, hoses.

Q. How about batteries?

A. He does buy some batteries occasionally on call only. He doesn't stock them.

Q. Do you have any idea of the volume of business with him?

A. For 1957, \$33.81.

Q. \$33.81?

A. Yes.

Q. How about 1956?

A. '56, \$161.94.

Q. Do you know how many calls you made on him that year?

A. This year I have only called on him since January, but there were 22 calls made on him in 1956.

Q. And this year do you know how often you have called on him?

A. About every two weeks.

Q. Does he handle TBA in his station?

A. I'm not too sure, I don't think he does. He doesn't carry a very large stock.

Q. Does he own his own station do you know?

A. Yes.

Q. How about this Village Green station, does that gentleman own his own station?

A. Village Green Atlantic?

Q. Yes.

A. No, that was a leased station.

Q. Do you have the names of any other of your customers there?

A. Harry and Jim's, Naamans Creek Road and Meeting House Road. That's in Ogden, Pennsylvania.

Q. What do you sell to him?

A. He's a pretty new station, so this year there is \$104.93.

Q. When did he open up, do you recall?

A. I don't recall, someone else had that account until just recently.

Q. Do you recall what it was you sold to him?

A. A majority of the sales here were parts that he 747 called store and had delivered.

Q. What type parts? Is this hard parts?

A. I really couldn't say what they were.

Q. I see.

A. Minor parts for repairs, I imagine, like brake hoses and maybe a set of brake shoes.

Q. Do you have any other accounts which you sell to? Atlantic accounts?

A. Brookhaven Atlantic Station, Middletown Road, Brookhaven, Pennsylvania. Just for 1957 we have \$50.

Q. You were not selling to him prior to '57?

A. I have only had him since the first of the year.

Q. Did some other salesman—

A. Some other salesman called on him.

Q. From your company, is that correct?

A. Yes, sir.

Q. Who would that be, do you know?

A. Quinton Siefert, he isn't with us any more.

Q. Do you recall what those sales consisted of, this 1957, \$50?

A. The \$50, that was for car rugs.

Q. Did you say only?

A. That's all, yes. You see, when they call in the store we don't know what they buy, actually, because our truck delivers it out to them. When we write it on an order 748 pad we naturally know what we are selling him.

Q. You get a commission on his purchases anyway?

A. On anything that he buys.

Q. Have you given me your seven Atlantic stations or do you have others?

A. Well, there is one new one here, but he just opened recently.

Q. How recently did he open?

A. I'd say about two months ago.

Q. You have called on him, have you?

A. Yes, sir.

Q. How recently?

A. In May. I made one call on him in May and one on June the 7th, and that's the last time I called on him.

Q. Have you sold him anything?

A. Ignition.

Q. Can you place the date of his opening a little more closely, please. You say about two months ago.

A. I'm pretty sure it's some time in May.

Q. Some time in May?

A. Yes.

Q. Well, do you know how soon after he opened up you called upon him?

A. I'd say about two weeks.

Q. Did you offer him your line of batteries and accessories?

749 A. No, I didn't.

Q. To sell?

A. No.

Q. Why not?

A. Well, at that time he was pretty well tied up and he asked me to call back again. When I called back again that's when I sold him ignition, but I just stated where we were located and the type of services that we were performing and so forth and it's pretty hard to get everything over the first time, especially when the man is just new.

Q. Did he have any TBA in the station when you called on him?

A. Yes, sir.

Q. What brand was that?

A. Goodyear.

Q. Would you mind repeating the address of that station, please?

A. Castagna's Atlantic Station, Conchesteer Road, RFD #1, Boothwyn, Pennsylvania.

751 Q. Who are the Goodyear suppliers in your territory, do you know, Mr. McCandless?

A. Edward Parris.

Q. And does he cover—is he the supply point for all the stations in your territory including that Delaware? No, not the Delaware.

A. Not the Delaware station.

Q. Was it the Village Green Atlantic Station at Concord and Scheivert that is closed, is that the one you told me?

A. Well, it's not closed, the man that was in there he took another station, I believe, he's taken another 752 station and there is a new operator in it.

Q. But it's still an Atlantic station?

A. Yes, it's still an Atlantic station.

Q. And the man that was in there, what was his name, do you recall?

A. Edward Zoba.

Q. Has he opened another Atlantic station now?

A. He's opened a Sinclair station.

Q. Did you ever attempt to sell Mr. Zoba your batteries?

A. On some occasions, yes, sir.

Q. Did you sell him any?

A. No.

Q. How about your chemicals?

A. I tried to sell him but wasn't very successful.

Q. Filters?

A. No.

Q. Did you tell me that you made sales amounting to about \$786 in 1956 to that station and \$932 in 1957, was that the station?

A. Yes, sir.

Q. What did those sales consist of?

A. Mostly brakes, ignition, and maybe a small piece of equipment—brake parts.

Q. What type delivery service do you offer your customers?

A. Well, if it's an emergency we try to send it out 753 immediately within, oh, as long as it takes to get it on the truck if it's an emergency delivery. But we do have scheduled deliveries in the morning and in the afternoon. That is for more or less stock orders.

Q. I see. And is that daily?

A. Every day. Up until 12:30 on Saturday.

Mr. Dias: That's all.

Cross Examination by Mr. Ballard.

Q. Mr. McCandless, during your testimony you have been refreshing your recollection with some records in front of you, isn't that right?

A. Yes, sir.

Q. May I see those records, please?

(The witness handed the document to counsel.)

Q. You also have a letter there from the Federal Trade Commission?

A. Yes, sir.

Q. May I see that, please?

Mr. Dias: I would like to see the records myself, I haven't seen them either.

(The documents were handed to counsel by the witness.)

Mr. Correa: Are these made up from some record kept in your office?

754 The Witness: Yes, sir.

Mr. Ballard: We have no questions, your Honor.

Mr. Correa: I have no questions, if your Honor please.

Mr. Kelahe: May we have a recess?

Hearing Examiner Kolb: That's all, Mr. McCandless, thank you.

(Witness excused.)

Hearing Examiner Kolb: We'll recess.

(Thereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelahe: I would like to call Mr. Connell to the stand, please:

CONRAD CONNELL was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelahe.

Q. Will you please state your full name and address, Mr. Connell?

A. Conrad Connell, Six East Amhurst Road, Kenwood, Pennsylvania.

Q. And are you an employee of the Electric Storage Battery Company?

755 A. I am.

Q. And for how many years have you been with that company?

A. For twenty-eight years.

Q. Twenty-eight years. And could you briefly describe the positions you have held with that company during that time?

A. I assume you mean briefly.

I started as a salesman in the Industrial Division in 1929; in 1937 I was transferred to Automotive Sales as Senior Salesman in the Philadelphia Branch; in 1949 I moved to the General Offices as Supervisor of Exide Replacement

Sales; about a year or two later the title was changed to Manager of Exide Replacement Sales; in 1954 I was made Sales Manager of the Northeast Region of the Exide Automotive Division of the Electric Storage Battery Company. That is the position I hold today.

Q. Are you familiar with the history of the—does your company manufacture the Exide brand of batteries?

A. We do.

Q. And do you also manufacture other brands of batteries either through the parent company or subsidiaries if you have subsidiaries?

A. Through the parent company; yes, sir.

Q. And what brands of batteries do you manufacture?

A. Well, as a proprietary brands we have Exide, Willard, and Grant in addition to which we manufacture 756 a number of other brands so-called private brands, I'm not sure that I can name them all.

Q. Name some.

A. We manufacture Atlas, Ford, Firestone, Mobile, I think of the important ones that would cover it.

Q. Thank you.

At one time did your company have a contract with Atlantic Refining Company in connection with the sale of Exide Batteries?

A. We did.

Q. And would you please state when that contract originally went into effect?

A. We had initially a contract on what I would term a local basis, on a region basis with the Atlantic Refining Company which I believe started in 1937.

Q. What do you mean by a local regional basis?

A. Only for the sale, it was an, I would say a trial balloon. I believe the initial start for the sale of batteries by the Atlantic Refining Company. That is my impression of it.

Q. And do you mean that certain areas were designated in which you had this trial run, so to speak?

A. I mean that we had a contract with the Philadelphia Region of the Atlantic Refining Company for distribution by them in that region.

Q. And then later was that contract expanded to 757 cover other regions of Atlantic?

A. Later we signed a contract for the national distribution; that is in the entire area in which Atlantic Refining operated.

Now, they didn't go into all the areas at one time but the contract was on a basis of their distributing Exide batteries throughout their operation.

Q. When did that contract go into effect, approximately?

A. I'll tell you, I believe—1949.

Q. 1949?

A. 1949; that's correct.

Q. And prior thereto, weren't you distributing Exide batteries for many years into various Atlantic marketing regions?

A. Into Atlantic marketing regions?

Q. Yes.

A. Yes, we were.

Q. I'm not quite clear on your reference to 1949. You stated that your original contract with Atlantic was in 1937.

A. That's correct.

Q. Now—and that was confined to the Philadelphia region or was that the Philadelphia-New Jersey Region of Atlantic?

A. I can't from memory define the boundary territories, but it was what Atlantic Refining considered their Philadelphia region.

Q. Now, after 1937 do you recall the dates when 758 you expanded the program in so far as Atlantic was concerned?

A. Well, the expansion would have taken place from the signing of the 1949 contract.

Q. At any time after 1937 did you enter into a contract with Atlantic to sell Exide batteries for distribution in any area other than the Philadelphia Region?

Mr. Thompson: I didn't understand the question.

The Witness: Mr. Kelaher, I have to correct a statement I made.

The contract on a national basis was made in 1945 rather than 1949.

By Mr. Kelaher:

Q. And from 1945 on you sold Exide batteries under a contract with Atlantic Refining Company for distribution to Atlantic outlets, is that correct?

A. That's correct.

Q. And would you just state briefly the flow of distribution of the Exide batteries to Atlantic outlets, all going to Atlantic outlets?

A. Well, Atlantic Refining were one of a number of distributors of Exide batteries in the territory. Our policy is to sell to distributors who in turn, and one of which was Atlantic Refining Company, sold to service stations, car dealers, any outlet, any retail outlet, consumer outlet for the sale of storage batteries.

759 Q. Well now, with reference to the batteries sold to Atlantic solely, were they physically handled by Atlantic and put in warehouses for redistribution or just how did that operate?

A. Just as you have described it and in exactly the same way as every other distributor; they bought from us at a standard distributor price, accepted delivery, billing, paid their bills, made their own deliveries.

Q. You dealt directly with Atlantic and not with Atlantic stations, is that correct?

A. That's correct.

Q. Now, Mr. Connell, you are here in answer to a subpoena duces tecum, are you not?

A. Yes, sir.

Q. And have you examined the documents referred to in Specification I of the Specifications attached to your subpoena?

A. Yes, I have.

Q. Are they true and accurate copies of documents in the files of the Electric Storage Battery Company?

A. They are.

Mr. Kelaher: Your Honor, at this time I would like to ask counsel for respondents if they will concede the authenticity of the documents mentioned in Specification I?

Mr. Thompson: If Mr. Connell says they are from 760 the files of the Electric Storage Battery, of course we will concede it.

Mr. Kelaher: We would also like to ask counsel if we may substitute photostats for the originals so that the originals may be kept in the files of Electric Storage Battery Company?

Mr. Thompson: Certainly.

Mr. Correa: No objection.

Mr. Kelaher: Thank you.

Your Honor, I think if agreeable to you and to counsel I will identify all the documents at one time.

Hearing Examiner Kolb: I think that would be better.

Mr. Kelaher: For identification as Commission Exhibit 298, letter dated June 15, 1950 from Mr. S. J. Heide-man, Atlantic Refining Company to Mr. C. Connell, Manager Automotive Replacement Sales, Electric Storage Battery Company, 19th Street and Allegheny Avenue, Philadelphia 32, Pennsylvania.

As CX-299, the Electric Storage Battery Company memorandum dated June 29, 1950 from E. E. Stevenson to A. D. DeMott, in re: "AR Sales."

For identification as CX-300-A and 300-B, a two-page memorandum dated December 14, 1950, from E. E. Stevenson to A. D. DeMott, in re: "AR Sales."

Up in the upper right hand corner, the name quoted 761 Atlantic Refining Company appears.

With reference to CX-299 for identification, the name "Atlantic Refining Company" also appears in the upper right hand corner.

Mr. Thompson: I couldn't hear the last statement, the acoustics in the room, Mr. Kelaher.

Mr. Correa: Could we have it read, please?

(The reporter read the following statement:

"Mr. Kelaher: * * * With reference to CX-299 for identification, the name 'Atlantic Refining Company' also appears in the upper right hand corner.")

Mr. Kelaher: For identification as CX-301, letter dated December 15, 1950 from J. S. Parks, Purchasing Agent, by Charles F. Bergh, Atlantic Refining Company, to the Electric Storage Battery Company, Allegheny Avenue and 19th Street, Philadelphia 32, Pennsylvania, attention: Mr. C. A. Connell, Manager, Automotive Replacement Sales Division.

As CX-302 for identification, letter dated December 22, 1950, from C. Connell, Manager, Automotive Replacement Sales Division, the Electric Storage Battery Company, to Mr. J. S. Parks, Purchasing Agent, in the Atlantic Refining Company, 260 South Broad Street, Philadelphia, Pennsylvania.

762 As Commission's exhibit 303 for identification, the Electric Storage Battery Company memorandum dated January 4, 1951, from C. Connell to R. L. Sommerville, Assistant General Sales Manager, in re "A. R. sales," and with the name "The Atlantic Refining Company." in the upper right hand corner.

For identification as Commission's exhibit 304, letter dated February 5, 1951 from S. J. Heideman, The Atlantic Refining Company, to Mr. C. Connell, Manager, Automotive Replacement Sales, Electric Storage Battery Co., 19th Street and Allegheny Avenue, Philadelphia 32, Pennsylvania.

As Commission's exhibit 305-A and -B for identification, a two-page interoffice letter of the Electric Storage Battery Company dated February 14, 1951, from C. Connell to R. Whitehurst, Vice President, in re "Atlantic Refining Company."

As Commission's exhibit 306-A and -B for identification, a two-page interoffice letter from the Electric Storage Battery Company, dated February 22, 1951, from C. Connell to R. Whitehurst, Vice President, with carbon copy to R. L. Sommerville, in re "The Atlantic Refining Company."

Mr. Thompson: Where did you get this "in re"?

Mr. Kelaher: In place of "in re," put "subject."

As Commission's exhibit 307 for identification a letter dated February 23, 1951, from J. S. Parks, Purchasing 763 Agent, by Charles F. Bergh, the Atlantic Refining Company, to the Electric Storage Battery Company, Allegheny Avenue and 19th Street, Philadelphia 32, Pennsylvania, attention Mr. C. Connell, Manager, Automotive Replacement Sales Division.

As Commission's exhibit 308 for identification, letter dated March 7, 1951 from C. Connell, Manager, Automotive Replacement Sales Division, Electric Storage Battery Company, to Mr. J. S. Parks, Purchasing Agency, the Atlantic Refining Company, 260 South Broad Street, Philadelphia 1, Pennsylvania, attention Mr. C. F. Bergh.

As Commission's exhibit 309 for identification, the Electric Storage Battery Company interoffice letter dated March 13, 1951, from C. Connell to Atlanta Branch, J. A. Cronk; Boston Branch, T. G. Tynan; and five other branches and

named persons, with carbon copies to various Electric Storage Company personnel, subject "The Atlantic Refining Company."

As Commission's exhibit 310 for identification, the Electric Storage Battery Company memorandum dated August 16, 1951 from R. L. Sommerville to C. Connell, carbon copy to Mr. R. Whitehurst, with the name "Atlantic Refining Company" in the upper right hand corner.

As Commission's exhibit 311 for identification, the Electric Storage Battery Company interoffice letter dated October 3, 1951 from C. Connell to Assistant General Sales Manager, R. L. Sommerville, carbon copy to R. Whitehurst, subject, "Atlantic Refining Company."

As Commission's exhibit 312-A through -D for identification, Electric Storage Battery Company interoffice letter dated November 19, 1951 from R. S. Findley, Philadelphia Branch, to AR sales, Mr. C. Connell, in re "Atlantic Refining Co."

As Commission's exhibit 313 for identification, Electric Storage Battery Company interoffice letter dated December 19, 1951 from R. S. Findley, Philadelphia Branch, to AR sales; Mr. C. Connell, subject, "The Atlantic Refining Company."

(The documents referred to were marked Commission's exhibits 298; 299; 300-A, -B; 301; 302; 303; 304; 305-A-B; 306-A-B; 307; 308; 309; 310; 311; 312-A, -B, -C, -D; and 313 for identification.)

Mr. Kelaher: I offer Commission's exhibits 298 through 313 into evidence, your Honor.

Mr. Correa: If your Honor will give us a moment, I think we may be able to handle these all in one lot.

Hearing Examiner Kolb: All right.

Mr. Correa: If your Honor please, with respect to the proffered exhibits, we have no objection to the following: 298, 301, 302, 303, 304, 307, 308, 309, 310 and 311. Exhibits

for identification marked 299, 300-A-B, 305-A-B, 306-A-B, 312 and 313 are objected to, if your Honor please.

Hearing Examiner Kolb: The documents not objected to will be received in evidence: Commission's exhibits 298, 301, 302, 303, 304, 307, 308, 309, 310 and 311.

(The documents referred to, heretofore marked COMMISSION'S EXHIBITS 298; 301; 302; 303; 304; 307; 308; 309; 310; and 311 for identification were received in evidence.)

By Mr. Kelaher:

Q. Mr. Connell, I show you Commission's exhibit for identification 299 and ask you to state who Mr. Stevenson is, and what his position was at the date of that letter?

A. Mr. Stevenson was what we knew as an automotive replacement salesman in the Exide Division, headquartering in the New York Branch, located in New York City.

Q. And the date of that letter is June 29, 1950, and at that time was Atlantic undertaking a test program with Goodyear with respect to the sale of Goodyear TBA in the Newark district?

A. You say at that time. I would have to look up dates. I believe that this was during the time that Atlantic Refining was operating this test program.

Q. And the letter has reference, the memorandum, has reference to that specific period, does it not?

A. It does, yes.

Q. I also show you Commission's exhibit for identification—

Mr. Thompson: May we take these one at a time, sir?

766 Mr. Kelaher: That is what I am doing, taking these two together.

By Mr. Kelaher:

Q. I ask you to note the date on that one, December 14, 1950, and would you please look at the name, Mr. Stevenson, and state whether he was the same Mr. Stevenson you just referred to?

A. That is right.

Q. And during the period in question, the Atlantic-Goodyear TBA test program was in effect in the Newark District, was it not?

A. That is correct.

Q. And the document you are looking at, Commission's exhibit for identification 300-A-B, refers to a survey made of the Atlantic accounts by Mr. Stevenson, is that correct?

A. That is correct.

Q. Were those reports made in the regular course of business and were they then referred to the home office?

Let me ask you first: Who is Mr. A. D. DeMott?

A. Mr. DeMott is what we knew as senior automotive replacement salesman in the New York Branch. Mr. Stevenson reported to him.

Q. Did Mr. DeMott in turn report to you?

A. Mr. DeMott actually reported to the New York Branch manager. In my position as manager of Re-767 placement Sales, at that time I had no line authority over these men because the branch manager had been under him on automotive work and industrial work as well.

Q. Do these reports eventually—were they eventually sent to the main office, here in Philadelphia?

A. Sent to me, yes.

Mr. Kelaher: I submit, your Honor, that exhibits 299 and 300-A-B are qualified documents; they are relevant to this proceeding; and should be admitted into evidence. (Handing to Examiner.)

Among other things, they are records made in the regular course of business.

Mr. Correa: If your Honor please, I would like to call your Honor's attention with respect to Exhibit 299, taking them one by one, that this is a report by Mr. Stevenson of a conversation he had with a Goodyear distributor, who happened to be an Exide wholesaler distributor but who apparently was passing on to Mr. Stevenson gossip which he had come by in his capacity as a Goodyear tire distributor.

Now I submit that even though it may be business of this company to collect gossip, which I doubt, that that kind of a report falls within your Honor's double hearsay rule as clearly as it can be and can scarcely be characterized as—

Hearing Examiner Kolb: (Interposing.) Off the record.
(Discussion off the record.)

768 Hearing Examiner Kolb: On the record.

Mr. Thompson: On behalf of Atlantic, I join in the objection made by Mr. Correa with respect to 299. Do you wish to hear my objection to 300 or shall I defer that?

Hearing Examiner Kolb: Let me read this one.

The objection will be sustained, as to 299.

Mr. Thompson: If your Honor please, with respect to 300, A and B, the objection of Atlantic Refining Company is a qualified one. I have no objection to the admission of this report provided the second sentence on 300-A relating to one Joseph Wash be received merely to indicate a state of mind of Mr. Wash and not to prove the fact stated.

On exhibit 300-B, the same qualification in my view applies to the second sentence of the statement referring to one Joseph Marino, that is to say, I would have no objection to it as state of mind evidence provided it is limited to that particular subject.

Mr. Correa: We associate ourselves with the statement just made by Mr. Thompson, if your Honor please.

Mr. Kelaher: Your Honor, I would like to call your

attention to the fact that on Commission's exhibit 300-A and -B, they are willing to accept the credibility of the document excepting as to the statement made by Joseph Wash, which indicates—which states that “he advised 769 us that he has to stock Goodyears since this is a leased station,” and there is a statement with respect to Joseph Marino, 300-B, that they advise that the majority of the batteries they sell are still Exides, but do not stock any number because of the constant pressure being exerted by the salesmen for the Atlantic Refining Company.

If they are willing to accept the other statements in the document, it is quite surprising that they would pick out two of the numerous reports here and qualify to that extent.

Mr. Thompson: That is the most naive remark I have heard for a long time, sir. It isn't surprising in the least. It is certainly what you would expect of me, if you think I am a good paston.

Mr. Kelaher: Clearly, if it has credibility as to 10 of them, it should have as to the other 2 and I think there is nothing naive about that. I think that is a naive objection.

Hearing Examiner Kolb: I think this comes within the Danbury-Hatters case and Lawlor vs. Loewe, in which the testimony as to the statements made by various parties was admitted as to the state of mind and not to prove the truthfulness of the statements. And I think this is certainly within that, and will have to be received on that basis and no other.

770 Mr. Kelaher: But as to all of them, not to two of them?

Hearing Examiner Kolb: The whole thing is received on the basis I just stated.

(The document referred to, heretofore marked as COMMISSION'S EXHIBIT 300-A and -B for identification was received in evidence.)

Mr. Thompson: I have no objection, sir, except as stated. Mr. Kelaher offered the document. My objection was a qualified one. So far as I am concerned, the rest of the document is in evidence, for any purpose anybody wants to use it for.

Mr. Kelaher: As I understand the Examiner's statement, the ruling applies to the entire document, isn't that correct?

Hearing Examiner Kolb: Yes.

By Mr. Kelaher:

Q. Mr. Connell, I show you Commission's exhibit for identification 305-A and -B, and ask you whether you are the Mr. Connell who prepared that memorandum and forwarded it to Mr. R. Whitehurst?

A. That is correct.

Mr. Kelaher: Your Honor, I offer Commission's Exhibit 305-A and -B into evidence.

Mr. Correa: If your Honor please, we object to exhibit 305. This is a memorandum in which this witness purports to set forth the substance of a telephone call he had 771 from somebody connected with Atlantic Refining concerning a decision made by the top management of Atlantic Refining.

Now we submit, if your Honor please, that this testimony, if it were offered in the proper way and there is no reason shown why, with the witness sitting in the witness stand, his memorandum of the fact is offered rather than his testimony, except perhaps that his testimony would be clearly inadmissible and it is hoped that the memorandum on some theory or other might be used as a device for smuggling what would otherwise be inadmissible into the record. And we object to that, if your Honor please.

Mr. Kelaher: Mr. Examiner, I would like to be heard in answer to counsel's statement at your convenience.

Hearing Examiner Kolb: All right.

Mr. Kelaher: Mr. Examiner, this was a document made on February 14, 1951; it was made contemporaneously with the conversation that this gentleman had with Mr. Heidman, and he is available for—

Hearing Examiner Kolb: (Interposing.) You have the witness on the stand, and he didn't say anything about that. I think you ought to ask the witness a few questions.

By Mr. Kelaher:

Q. Mr. Connell, would you please state when this memorandum was drafted, the date when it was drafted?

A. Well, I think that is quite clear, it is dated 772 February 14, 1951, and I state that it was written after conversation, telephone conversation that same day.

Q. With whom?

A. Mr. S. J. Heidman.

Q. And he was with which company?

A. TBA Manager of the Atlantic Refining Company.

Q. And the memorandum was drafted the same day?

A. The same day.

Q. And this recounts the conversation you had with Mr. Heidman, is that correct?

A. That is correct.

Mr. Correa: Is this being offered as past recollection recorded, may I inquire, because if so, I submit that no proper foundation has been laid, and if not, I must confess as to being at a complete loss as to the theory on which it is offered.

Mr. Kelaher: You have the witness available for cross-examination.

Mr. Correa: But you have him available for direct examination.

Hearing Examiner Kolb: There appears to be no doubt

the conversation took place. The witness says the conversation was held. I overrule the objection.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 305-A and -B for identification were received in evidence.)

773 Mr. Correa: May I add on behalf of the Respondent Goodyear, the further objection that the subject of the document and—or the conversation which it purports to set forth is hearsay. It is not a conspiracy case here and statements made by or on behalf of the Respondent Atlantic Refining Company are in no way and in no sense binding or admissible against Respondent Goodyear except pursuant to the proper rules of evidence, which this document transgresses in every particular, we respectfully submit.

Hearing Examiner Kolb: I have ruled on the objection.

Mr. Correa: May the record show that your Honor additionally ruled on the separate objection of Goodyear based on—

Hearing Examiner Kolb: (Interposing.) You make your objections before I rule, not after I rule.

There have been several occasions when that has been done. I have attempted to rule on these as fairly as I possibly can, but I don't want to rule and have to hear arguments after I rule. That has been my position all the time in all these cases. If you want to object, make it before I rule.

Mr. Correa: If your Honor please, in this case—

Hearing Examiner Kolb: (Interposing) As far as I am concerned, I overrule your second objection.

Mr. Correa: Your Honor will appreciate I am in
774 some difficulty because many of these documents are objectionable as to both respondents on general grounds. They are additionally and independently objectionable as to the Respondent Goodyear on separate

grounds that perhaps are applicable only to that Respondent, and sometimes it is necessary to amend that separate objection to preserve Goodyear's position.

Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. I show you Commission's exhibit for identification 306-A and -B, and ask you to state further, Mr. Connell, whose name appears at the bottom of that document?

A. Mine.

Q. Would you please state the purpose of that memorandum?

Mr. Correa: I object to a statement of the purpose of the memorandum, if your Honor please.

Hearing Examiner Kolb: Ask him what it is.

By Mr. Kelaher:

Q. Would you please state what the memorandum is?

A. The memorandum is addressed to Mr. R. Whitehurst, Vice President, signed by me, subject, "Atlantic Refining Company." This memorandum is in the form of a report to Mr. Whitehurst, our Vice President, indicating the steps which we planned to take to attempt to retain the business that has been flowing through the Atlantic Refining Company for the sale of Exide batteries.

775 Q. Now the date of that is February 22, 1951, is that correct?

A. That is correct.

Q. When was your contract with Atlantic cancelled?

A. The official written cancellation from Mr. Parks was dated February 23, 1951.

Q. And when did you receive the notification that it was going to be cancelled from Atlantic?

A. Unofficially, February 14.

Q. And this second memorandum was written eight days thereafter?

A. Eight days thereafter, yes.

Mr. Kelaher: Mr. Examiner, I now offer COMMISSION'S EXHIBIT 306-A and -B into evidence.

Mr. Correa: If your Honor please, I wish to state my objection now, when your Honor is ready.

Hearing Examiner Kolb: Just a minute, please.

All right.

Mr. Correa: If your Honor please, as to the defendant Goodyear, this document, 306-A and -B is objected to on the ground that, as to the Defendant Goodyear, this is rank hearsay. These are statements and declarations made by various personnel of the Atlantic Refining Company, who is our co-respondent in this case, but we are not charged in this case as being in any conspiracy with the Atlantic Refining Company, we are not charged with being in any other relationship which would make their 776 statements and declarations binding on us as an exception to the hearsay rule, and consequently, as to us, this is just a collection of rank hearsay, and your Honor will see that, if your Honor would note, for example, the second sentence of the memorandum which reads "Additional information has been received from the Atlantic Refining Company, and steps have been taken with our branches to insure our retaining the maximum possible share of this business."

And down at the beginning of the third paragraph appearing on 306-A, "Mr. D. T. Colley, Vice President and General Manager of the Atlantic Refining Company, has already requested their Purchasing Department to formally notify"—and so forth, to do thus and so.

The very next paragraph, still on 306-A, "Mr. Heidman is now preparing letters to go out over Mr. Colley's signature, one to all of their dealers and the second" and so forth, as to what they are going to do.

On 306-B, the first paragraph beginning on that page,

"Mr. Colley has clearly indicated to Mr. Heidman"—now that is undoubtedly scuttle-but which Mr. Connell was getting from somebody in Atlantic Refining Company as to various things that that company was doing, and may or may not be admissible as against that respondent in this proceeding; from that proposition I resign, Mr. 777 Thompson will handle that quite adequately, I am sure.

But as to Respondent Goodyear, I submit this without any showing of a basis on which the admissions, if they be that, of our co-respondent, can be taken as against us, ought to be ruled inadmissible and we further, if your Honor please, make a separate and independent objection on general grounds, that I have never in my court or even in an administrative proceeding—with all due respect to the alleged or supposed informality and perhaps laxity so far as the rules of evidence are concerned of the administrative process—I have never heard of a proceeding whereby a witness was called to the witness stand, sworn, and instead of being asked to testify, was shown documents of his authorship and asked to identify them as being of his authorship, and not even asked to say the statements made in the document were true and correct, lest the statements might go in in sworn form, and then that pitiable excuse for evidence is offered in lieu of the testimony of the witness, without any showing that the witness lacks recollection, that he needs his recollection refreshed, or that he is in any other manner incapable of testifying and on all of those grounds, if your Honor please, we object to the proffered exhibit.

Mr. Thompson: If your Honor please, I join in Mr. Correa's objection.

Hearing Examiner Kolb: His objection is to Good- 778 year, and not to Atlantic.

Mr. Thompson: Yes, sir, and I shall revise my statement by saying I thoroughly concur in Mr. Correa's rea-

soning as a former instructor of evidence in the University of Pennsylvania Law School.

I don't know of any rule of evidence which permits a man to write a memorandum up and then bring it into court and say, "Here, I want to testify, here is what I wrote sometime ago," instead of having a memorandum which refreshes his present recollection, to which he can refer in the course of his testimony, or says he can't remember anything about it and it was all true when I wrote it and then it is admitted as past recollection.

As Mr. Correa says, that is the only way I know you can get these documents in which a witness writes.

Mr. Kelaher: Mr. Examiner, do you care to hear from counsel supporting the complaint?

Hearing Examiner Kolb: I want to hear from all of you before I rule and when you finish, I will rule, not before and not after.

Mr. Kelaher: I was never a professor in a law school on evidence, but—

Mr. Thompson: (Interposing) I thought that ought to be on the record.

Mr. Kelaher: (Continuing)—I do have some ability 779 to read and I think in Title 28, Section 1732 of the U. S. Code there is such a thing as records in the regular course of business. And that clearly says that a document prepared in the regular course of business, which this undoubtedly was, that records facts, contemporaneous in the event, were recorded, and I would like to call your Honor's attention to the fact that the Electric Storage Battery Company was vitally affected at that time. They had a contract in effect to supply Exide batteries to the entire Atlantic market, as of February 14, 1951, and the Electric Storage Battery Company, through Mr. Connell, was advised that that contract was no longer in effect and that the Goodyear Tire and Rubber Company

had entered into a TBA sales Commission plan with Atlantic covering three regions and that the Firestone Tire and Rubber Company had entered into a contract covering TBA sales in these other marketing regions of Atlantic, the three regions.

Therefore this company was vitally affected, they took steps as stated by the witness to attempt to retain as much of the business as they possibly could by selling directly to Atlantic dealers and I certainly think it is relevant, material, and it has great credibility.

Mr. Correa: May I inquire of counsel supporting the complaint, if your Honor please, on what theory, if he has any theory, he thinks that hearsay declarations made 780 by Atlantic officials to this witness are admissible against the Respondent Goodyear?

Mr. Kelaher: I think the document speaks for itself. Mr. Connell prepared the document. I suggest you ask him.

Hearing Examiner Kolb: It has never been clear in my mind, the way this complaint is pleaded, as to whether or not this is a conspiracy or not; I never have been able to figure that out.

Mr. Correa: All I can say to that your Honor is it seemed to me from other complaints which I have read that when it is the intent of the Commission to charge conspiracy, they generally charge it, *ipsis verbis*.

Certainly, if at this late stage in the matter we are now to be told that this is a charge of conspiracy, I shall have to plead surprise and take whatever remedies that may be available to me in light of being surprised by a change in theory on the part of counsel supporting the complaint when the case is well on its way through trial.

As a matter of fact, my attention has been directed to the fact, if your Honor please, that in a brief written by our learned friend supporting the complaint, in an interlocutory appeal to the Commission, earlier in this same

proceeding, at page 13, the statement appears and I quote: "While the complaint does not charge a conspiracy, we do contend that the contemporaneous contracts entered into by Atlantic with Goodyear and Firestone were utilized 781 to divide the Atlantic market and constitute contracts in restraint of trade within the meaning of Section 1 of the Sherman Act and as such are within the purview of Section 5 of The Federal Trade Commission Act."

That would appear to be a pretty—

Hearing Examiner Kolb: (Interposing) He was trying to say a conspiracy backwards there.

Mr. Correa: I am of the old fashioned school who believes that words mean what they say and when they say "While the complaint does not charge a conspiracy," I am old fashioned enough to take them at face value. Maybe they meant the opposite of what they said, George Orwell's 1984, but I am not that advanced.

Hearing Examiner Kolb: Well, Mr. Kelaher, this appears to me to be a memorandum written by the witness and if he said that certain things are proposed to be done, I am not quite clear from this whether or not they have been done. I sympathize with counsel for the respondent in raising the question with the witness on the stand of putting the document in which says that certain things are going to be done when you have the witness here and you can let him testify with reference to that document, or at least as to the correctness of what was or was not done.

Mr. Kelaher: May I be permitted to question him?

782 Hearing Examiner Kolb: Yes. He is called as a witness.

By Mr. Kelaher:

Q: Mr. Connell, let's start with the beginning of this document, and go down the line.

You state: "My letter of February 14 advised you of the

Atlantic Refining Company's change in policy for the handling of TBA sales to the dealers." Is that a correct statement?

Mr. Thompson: I object to this form of questioning of this witness.

This document which is before him either does or does not refresh his recollection.

Mr. Kelaher: I am at quite a loss to understand what is wanted by counsel. First they accuse me of not asking him about the document, and when I start, then they object.

Hearing Examiner Kolb: The document is a memorandum and he can refresh his recollection. Let him refresh his recollection and testify as to the document.

By Mr. Kelaher:

Q. Does that first sentence refresh your recollection as to events that happened at that time?

A. Yes, it does.

Q. Would you please state in your own words what the import of that first paragraph is?

783 Mr. Thompson: That is objected to, sir. That is not the way to examine a witness on the stand in my experience.

Mr. Correa: I associate myself with that objection.

By Mr. Kelaher:

Q. You stated that it refreshes your recollection with respect to Atlantic Refining Company's change in policy. Now would you please state what information you received with respect to the change in TBA sales?

Mr. Thompson: May I ask received from whom?

Mr. Kelaher: From Atlantic.

Mr. Thompson: From whom in Atlantic?

Mr. Kelaher: I am asking the witness.

Mr. Correa: What is the question, if I may ask, the pending question?

Hearing Examiner Kolb: Read the question..

(Question read.)

Mr. Kelaher: From Atlantic.

Mr. Correa: That is objected to on behalf of the respondent Goodyear on the ground that it calls for hearsay as to Goodyear and is not binding on Goodyear.

Mr. Kelaher: Would you—

Hearing Examiner Kolb: (Interposing) As far as I am concerned, this complaint charges sufficient amount of conspiracy and I am not going to sustain the objection on the ground that Atlantic is involved and not Goodyear.

784 Mr. Correa: If your Honor please, then I have to submit that we have been misled by Counsel supporting the complaint, we have been, granted the complaint may be far from lucidly clear and no one would be faster to concede that than myself. We have had characterizations of the complaint and of the theory and specifically in respect of this point of conspiracy made formally and in briefs submitted to the Commission, when we were arguing, as your Honor will recall, the point in respect of which this matter of whether or not the complaint charged conspiracy was far from irrelevant and this is a very late date indeed in the proceeding to be told that despite their asseverations to the contrary, counsel supporting the complaint now claims that this complaint charges—

Hearing Examiner Kolb: He hasn't made any statement so far this afternoon. It is a question I have raised because you are sitting there and saying that this is a matter between the witness and Atlantic and you have nothing to do with it. When they come to Goodrich, he sits there and says it is a matter between the witness and Goodrich, and I have nothing to do with it, and then the complaint charges that the two of you, Goodyear and Atlantic, by means of this contract have done certain things, that is what the complaint charges. Then it must apply to both, whether

it is called a conspiracy in the course of action or 785 common course of action, or whatever they are going to call it. It just doesn't make sense to me.

Mr. Correa: If your Honor please, I submit with great respect that the complaint does not charge that the Goodyear and Atlantic together or in a common course of action did certain things. The charge is that Goodyear had a contract with Atlantic which provided for certain things to be done by Goodyear, which Goodyear did, and it charges that in connection with that contract, Atlantic did certain things and exercised certain influence and so forth over its dealers. That is what it charges. It doesn't charge anywhere conspiracy.

Hearing Examiner Kolb: That is what this witness is testifying to, what Atlantic did in connection with their dealers, in furtherance of the Goodyear and Atlantic contract and you are saying he can't testify because Goodyear is not involved.

Mr. Correa: I am saying, if your Honor please—

Hearing Examiner Kolb: (Interposing.) Well, we have to draw the line somewhere.

Mr. Correa: There is no exception to the hearsay rule under which this hearsay testimony, because that is what it is, let's face it, can be admitted in this proceeding, as binding on Goodyear. Now there is nothing in the world to stop counsel supporting the complaint from going 786 out and proving what Atlantic did in the ordinary and proper way, which they seemingly are allergic to, by getting testimony and witnesses and putting them on the stand and letting them testify directly. But for some reason they want to go around the barn and not get direct testimony, but get somebody who can only say as to what he was told by somebody else, and offer that for the truth, present somebody else, an absent declarant, if I may use the technical language of the law of evidence, and I object

to that, if your Honor please, and I submit that not only is here no basis in this complaint for the admission of any such evidence, but the complaint at least as explained and amplified by the statements of counsel supporting it, absolutely negates a basis of that kind and that is the basis, if your Honor please, of any objection and nothing else.

Hearing Examiner Kolb: Let me see that letter.

Mr. Kelaher: (Handing to the Examiner.)

Mr. Correa: May I add, before your Honor rules, because I wish to heed your Honor's admonition and complete my argument before your Honor rules, that it may well be that this seeming difficulty in which we find ourselves, owing to the application of the ordinary rules of evidence, and the difficulty which seems to arise about this complaint which one day has to be one thing for one purpose and another day another, a diametrically opposite thing, 787 for a different purpose, arises not out of the rules of evidence or even out of the philosophic principle of contradiction which says that a thing can not at one and the same time and in the same respect be and not be, but perhaps arises out of an adherent and basic weakness or inadequacy of the case attempted to be pleaded by this complaint against the respondent Goodyear.

Hearing Examiner Kolb: That will come out at the end of the case.

Mr. Correa: I agree, but I am quite serious in the suggestion I make. I think sometimes a weak case does not wait until the end to manifest itself.

Hearing Examiner Kolb: Well, I think the information contained in this letter, if properly approached by the witness, the witness could testify to it as far as Atlantic is concerned undoubtedly. I don't think you will question that.

Mr. Correa: No, if your Honor please. I make no point as to the admissibility of the evidence or the testimony

proffered against Atlantic one way or the other. My only objection is it being taken as against the respondent Goodyear.

Hearing Examiner Kolb: Well, that is where we get into difficulty.

Mr. Thompson: I wonder if we could have a one minute recess for me to consult with counsel.

788 Hearing Examiner Kolb: All right.

(Whereupon, a short recess was taken.)

789 Hearing Examiner Kolb: On the record.

Mr. Thompson: Mr. Examiner, during the short recess there was a conference of counsel and it is stipulated in so far as Atlantic and staff counsel are concerned that the last sentence on Commission Exhibit 306-B is withdrawn from the offer of the document, and with that understanding, so far as Atlantic is concerned, I will withdraw my objection to the admissibility of the document and thereby save the time that would otherwise be involved in having Mr. Connell testify to its contents.

Hearing Examiner Kolb: Will you strike that last sentence off the exhibit?

Mr. Kelaher: It can be done with pencil.

Mr. Correa: If your Honor please, for the respondent Goodyear I am willing to withdraw so much of our objection as goes to the introduction of the document in lieu of testimony in the ordinary way by the witness. So much of our objection as would lie against the reception of the substance of the evidence contained in this document, whether given in the form of an exhibit or given in the form of testimonial declaration on the stand still stands, but I gather from your Honor's previous rulings that that is a matter with which your Honor feels you can best deal with at a later stage in this case.

Hearing Examiner Kolb: I suggest it be received
790 subject to your objection.

Mr. Correa: Thank you, your Honor.

Hearing Examiner Kolb: Commission Exhibit 306-A and B will be received in evidence under stipulation and subject to objection of counsel for Goodyear.

(The documents referred to, heretofore marked for identification COMMISSION'S EXHIBITS 306-A and B, were received in evidence.)

By Mr. Kelaher:

Q. Mr. Connell, I call your attention to the fact that Commission Exhibit for identification 312-A through D inclusive, and 313 are documents with the name, R. S. Findley at the bottom thereof, is that correct?

A. That's correct.

Q. Is Mr. Findley still an employee of the Electric Storage Battery Company?

A. He is.

Q. And can arrangements be made to have Mr. Findley appear at this hearing some time during the remainder of this week to testify in connection with these documents?

A. I believe they can.

Q. Thank you.

Mr. Kelaher: Your Honor, we will reserve offering Commission Exhibits 312-A through D and 313 into evidence pending the appearance of Mr. R. S. Findley, 791 who authored the documents.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Any further questions of this witness?

Mr. Kelaher: Yes.

Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. Mr. Connell, after your contract with Atlantic terminated in February of 1951 did you then sell Exide bat-

teries directly into Atlantic dealers, directly to Atlantic dealers, by that I'm talking about the Electric Storage Battery Company soliciting Atlantic accounts directly.

A. The first, did we directly sell ~~to~~ Atlantic dealers, the answer to that would be no; did we attempt to sell or sell any Atlantic accounts, the answer to that is yes, because Atlantic Refining had both what we considered, in our opinion, distributors as well as dealers or subdistributors, and those accounts we attempted to solicit ourselves with some degree of success, the dealers we attempted to have our other wholesale distributors solicit their business.

Q. So, the Electric Storage Battery Company through its own branch such as the Philadelphia branch did solicit certain Atlantic dealer accounts?

A. Not dealer accounts, distributor accounts.

792 Q. I'm referring to Atlantic Dealers who were classed by your company as distributor accounts, is that correct or are you referring to—

A. (Interposing.) Shall I put—Atlantic accounts who supplied other dealers?

Q. You are referring to Atlantic accounts classified as distributors by Atlantic, is that correct?

A. I can't say how they classify them. They were classified in our opinion as distributors, because the order indicated that they sold other Atlantic dealers, other dealers.

In other words, we do no business direct with dealers, only with distributors.

Q. Are you familiar with so-called supplying dealers, such as Harvey George and Mr. Parris, Ed Parris?

A. I would say that I knew some of them. I knew a few of them personally, others I knew by hearsay.

Q. Now, would that type of account be solicited directly by your company or not?

A. I would have to refresh my memory on that. I

would say that as this letter indicates, we actually signed up three Atlantic accounts as direct wholesale distributors, one located in New Oxford, the other in Lancaster, and the other in St. Thomas. They do not happen to include the ones you mentioned. Those accounts we signed direct and retained for quite some time.

793 Q. I would like to show you Commission Exhibit for identification 312-A through D and on 312-B for example, reference is made to Aero Oil Company, Incorporated, New Oxford, Pennsylvania; Herr Thompson Oil Company, Inc., Lancaster, Pennsylvania; E. C. Barnes and Son, St. Thomas, Pennsylvania.

Now, the letter states, "three former AR Company wholesalers were signed up under WD contracts and are now buying exclusively from us."

Now, is a WD contract signed by the Electric Storage Battery Company directly, by one of your salesmen directly?

A. With these accounts, yes; that is a wholesale distributor account, it—the WD represents wholesale distributor.

Q. Reference is made on that same page to AW contract. Would you explain who solicits that business?

A. We had for the purpose of obtaining better distribution to small subjobbers, an arrangement with wholesale distributors whereby they could solicit the business of the so-called subdistributors, or jobbers, who in turn solicited dealer business. They were sold at a lower price than the authorized dealer price.

Q. Does your company directly solicit the business of W dealers?

A. If you say directly solicit them, we had on occasion in connection with the wholesale distributor man, if
794 there was a question of can we get the business or if a distributor said "I would like to get Joe Smith, and I'm able to, will you help me get him as a subdistributor?"

then our man might work with them. But actually in most cases the soliciting was done by the wholesale distributor and agreed upon with us.

Q. Well—

A. That is approved by us.

Q. So these accounts named in Mr. Findley's letter identified as Commission Exhibit 312-A through D, could have been called on by Mr. Findley personally or by someone under his supervision, is that correct?

A. No. I should correct the statement in that you asked me, I thought, broadly what our arrangement was for obtaining W accounts. In the case of the Atlantic Refining Company, with these so-called Atlantic wholesalers, they solicited the business of these accounts and handled all business with them without our aid. Now, this—

Mr. Thompson: I don't think the record is clear on who you mean by "they." Do you mean that the wholesale distributors solicited the wholesale accounts?

The Witness: The Atlantic Refining Company solicited this business and agreed to sell them at wholesaler prices.

Now you haven't asked me to volunteer this—

By Mr. Kelaher:

Q. After your contract with Atlantic expired who 795 solicited these accounts, the company directly?

A. No, then we asked our remaining wholesale distributors to go after this business, on a W basis. The only ones that we solicited direct— Now, I shouldn't say the only ones, but the ones we solicited and we thought justified a direct wholesale distributor contract and obtained were these three named above, you see, Aero Oil, Thompson and E. C. Barnes.

Now, when Mr. Findley says "28 Atlantic wholesalers have been signed under W contract as follows:" he means they were accounts who had been sold by Atlantic Refining Company, who upon termination of our contract with At-

lantic Refining Company, our other wholesale distributors went after in an effort to get their business for Exide.

Q. At that time your company was working with these other wholesale distributors, is that correct?

A. We were doing everything we could to retain the business, as we do any time we lose any customer.

796 Mr. Thompson: The WD accounts, they were your direct large distributor accounts, and the so-called W accounts were sub-wholesalers?

The Witness: That is correct.

Mr. Thompson: Who were signed up by the large wholesale distributors?

The Witness: That is correct. The contract is an agreement that they would buy at a pre-determined subdistributor price.

Mr. Thompson: But the sub-distributors dealt with the W distributors, wholesale distributors or with your company direct?

The Witness: No, their dealers, they were billed, their collections were the responsibility, their credit was the responsibility of the wholesale distributor.

Now I certainly can't say that our man would never contact a wholesaler. Certainly he did anything he could to further the obtaining of Exide batteries, but the overall picture was a relationship with the wholesale distributor.

Mr. Thompson: Well, I think you said previously that Mr. Findley worked in cooperation with the wholesale distributors to get the W contracts, to get the sub-jobber business?

The Witness: Because you were talking about a broad proposition, we have all types of wholesale distributors
797 some do things on their own and some can not, some require guidance and assistance.

Mr. Thompson: So he was fully informed as to the accounts listed in the document that he referred to? They were in his sales territory, were they not?

The Witness: That is correct. This letter is a report to me as a result of my asking why they weren't selling more Exide batteries, and this is his answer.

Mr. Thompson: To whom?

The Witness: To anyone. Why his sales were off.

Mr. Thompson: Did you refer him specifically to sales to Atlantic Refining accounts?

The Witness: That one I can't answer, although I am of the opinion that I asked why, asked the Philadelphia Branch why their sales were off and what they were doing to pull them up.

Mr. Thompson: And this is Mr. Findley's answer to you?

The Witness: This is one of a number of answers I got.

Mr. Kelaher: In view of the witness' statements, I think it would probably be appropriate to call Mr. Findley, who was working in the market at the time and question him about conditions at that time.

Mr. Correa: The work on the stipulation is for 798 nothing, I take it, then. I don't know why we wasted the time.

Mr. Thompson: If your Honor please, it is 20 of six and in view of that statement, I obviously can not start the cross-examination of this witness tonight. If they were not going to call Mr. Findley, I was going to waive cross-examination, but since they are apparently, I would like to defer the cross-examination of Mr. Connell either until tomorrow morning or until after Mr. Findley has testified.

800 Hearing Examiner Kolb: The hearing will come to order.

806 Mr. Kelaher: Mr. Examiner, before we call a witness, I would like to state that we have appended a specification 2 to the subpoena duces tecum served upon Mr.

Connell. It calls for a printed list of Exide wholesale distributors by states and cities and branches July 15, 1951 and also if available in printed form similar lists printed as of dates in 1950 and 1957, current.

If agreeable with counsel, I have been furnished with three lists dated July 15, 1951, November 1, 1950, and May 1, 1957, in response to this request, and I will now show them to counsel and if agreeable, it may be possible to stipulate these into the record without calling Mr. Connell back. (Handing to Respondent counsel.)

Mr. Kelaher: Your Honor, now that we have withdrawn 312 and 313, will the next number replace 312?

Hearing Examiner Kolb: No, it still remains that number. The next number will be 314.

Mr. Kelaher: At this time, your Honor, I would like to have marked for identification as Commission's exhibit 314-A through D a letter from William P. Cairo, Assistant Secretary of the Electric Storage Battery Company, dated June 26, 1957 addressed to me, to be identified as 314-A; and to be identified as 314-B a document entitled "Exide Wholesale Distributors by States and Cities, November 1, 1950"; and to be identified as 314-C a document entitled Exide Wholesaler Distributors by States and Cities, July 15, 1951"; and to be identified as exhibit 314-D a document entitled "Exide Wholesale Distributors by States and Cities, May 1, 1957."

(The document referred to was marked Commission's exhibit 314-A, -B, -C, -D for identification.)

Mr. Kelaher: I now offer these documents into evidence.

Mr. Correa: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record. Any objection?

Mr. Correa: No objection.

Mr. Thompson: I have no objection.

Mr. Kelaher: I would like the record to show that the exhibit just offered into evidence was furnished in response to specification 2 of a subpoena served upon Mr. C. Connell of Electric Storage Battery Company.

Hearing Examiner Kolb: There being no objection, 808 the document will be received in evidence as Commission's exhibit 314-A through D inclusive.)

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 314-A, -B, -C, -D for identification was received in evidence.)

Mr. Thompson: If your Honor please, you will recall that yesterday we, with your permission, deferred the cross-examination of Mr. Connell.

I have at the present time no intention of recalling Mr. Connell for cross-examination upon the assumption that the record is clear and in the event, when we look at the record, we find that there are ambiguities in it or things which require clarification, I should like still to reserve th right to call him.

Hearing Examiner Kolb: You can make the request after you have examined the record.

Mr. Thompson: Yes, sir. We haven't up to this point on the record waived it. I just wanted to be clear on that.

Hearing Examiner Kolb: Yes.

Mr. Kelaher: I assume that that request will be made during this week so we can recall Mr. Connell this week?

Hearing Examiner Kolb: I assume so.

Mr. Thompson: Yes.

Mr. Dias: I call Mr. Johnson, please.

809 TYLER L. JOHNSON was thereupon called as a witness for the Commission and having been duly sworn, examined and testified as follows:

Direct Examination by Mr. Dias.

Q. State your name and business address for the record, Mr. Johnson.

A. Tyler L. Johnson, 6118 and -20 Germantown Avenue.

Q. What is the name of your Company?

A. E. P. Rotzell Company.

Q. What is your position with the Rotzell Company?

A. I am a salesman in that territory.

Q. How many years have you been employed by Rotzell?

A. 16 years.

Q. All that time as a salesman?

A. Part of that time as a store manager.

Q. How long was that and when?

A. Two years, a little over, as store manager, due to the death of my store manager.

Q. And how long ago was that?

A. That was—I had been with the company about two years—that would be 1942, from 1942 to 1944.

Q. Since that time you have been a salseman?

A. Yes, sir.

810 Q. What is your sales territory, Mr. Johnson?

A. Roxborough, Manayunk, Chestnut Hill, Germantown, Mount Airy, and I also cover east of Board Street, just a few scattered calls.

Q. Do you attempt to sell the full Rotzell line?

A. Yes, sir.

Q. To what classes of customers do you attempt to sell?

A. I call on gasoline stations, automboile repair shops, new car agencies, used car dealers.

Q. Do you sell-so-called hard parts?

A. Pardon?

Q. Do you sell hard parts?

A. Hard parts?

Q. Yes.

A. Yes, sir.

Q. Is that term familiar to you?

A. No, it is not.

Q. Repair parts.

A. Repair parts, yes.

Q. What do you include in repair parts?

A. Well, replacement parts for transmission, rears, motors, ignition parts, and batteries and fan belts, and all that would come under those parts.

Q. Batteries would?

A. All in the replacement parts line.

811 Q. Among the service stations in your territory, are there any Atlantic service stations?

A. Yes, sir.

Q. Can you tell us approximately how many there are?

A. Approximately 25 or 30.

Q. And do you solicit those stations?

A. I solicit quite a few of them, not all of them.

Q. How many do you solicit?

A. Well, I would say 15 or 20.

Q. How often do you call on them?

A. Approximately every two weeks.

Q. What about the remainder of the Atlantic stations in your territory, do you call on them at all?

A. Well, some of those stations are located in the Northeast section of the city and they are beyond our range of delivery.

Q. How many of those are there, do you have any idea?

A. Well, I would say it would be 10 or more over in that section.

Q. Well, confining yourself then just to those stations which are within your reachable area, your sales territory and those that you can reach, how many are there? Do you call on them all?

A. Yes, I call on approximately all of them in the Roxborough Manayunk and Germantown, Mount Airy and Chestnut Hill areas.

Q. What do you sell them?

812 A. Well, we try to sell them accessories, and when I say accessories, I mean the chemical lines, fan belts. And I also try, if they do any minor repairs, try to sell them mufflers, brakes, and ignition parts, fuel pumps, fuel lines.

Q. What particular products constitute the majority of your sales to those stations?

A. To all the Atlantic stations, the ones that are doing minor repairs, most of our sales are in brakes, mufflers, or ignition parts.

We try to sell them chemicals and batteries and fan belts, but—

Q. (Interposing.) Do you sell them those items, batteries, chemicals and fan belts?

A. No, we don't. We are not able to sell them any of those. The prices are all right, but most of them carry a stock of batteries and they just don't handle—don't touch our batteries at all.

Q. What batteries do they carry?

A. Well, they carry Goodyear batteries.

Q. How about fan belts and hoses?

A. They carry Goodyear fan belts and hoses.

Q. Was there ever a time that you were able to sell to those stations?

A. Yes, a few years back we were able to sell them hoses, some fan belts, and we were able to sell them chemicals, anti-freeze also.

813 Q. How about batteries?

A. Batteries, well, once in a while, if they needed one, but we were never able to sell them a stock of them.

Q. How long ago was that?

A. I would say four or five years ago.

Q. Are you familiar with the George Kee Atlantic station?

A. Yes, sir.

Q. What is his address?

A. 6201 Ridge avenue.

Q. Do you sell to that station?

A. Yes, sir.

Q. Can you tell us what you sell to him?

A. Why, we sell them antifreeze—not all of their requirements, just a part of their requirements. We sell them mufflers occasionally, and brake linings, shock absorbers.

Q. How about batteries?

A. No.

Q. Filters?

A. Oil filters, no.

Q. Chemicals?

A. Can't sell them any chemicals.

Q. Do you know where he buys his supplies from?

A. He buys his chemicals and his batteries and fan belts from the Goodyear distributor.

Q. Do you know the name of that distributor?

814 A. Fred Glenn.

Q. Do they advertise TBA products on the stations?

A. Yes, sir.

Q. What type do they advertise?

A. They advertise Goodyear products and also the DuPont chemical line. They have Goodyear signs—well, the DuPont chemical line is handled by the Goodyear distributor.

Q. Fred Glenn?

A. That is right.

Q. Are you familiar with the Tom Beale station?

A. Yes, he has an Atlantic station at 8601 Ridge Avenue.

Q. Do you solicit his business?

A. Yes, sir.

Q. What do you sell to him?

Mr. Correa: If your Honor please, I must object just on the grounds that this is cumulative. We have already had the Atlantic stations in this gentleman's territory dealt with in testimony of a whole group of them. If we go through each one by one, we can sit here for ever I suppose. I don't object to the testimony as such, although I don't think it is particularly relevant and material, but I do object to having to sit here for endless assimilation of the same points.

Mr. Dias: As I recall yesterday, your Honor, there was some criticism about the fact that we didn't have specific instances, and now we have specific instances and they say it is going to take too long.

815 I don't know how to satisfy the other side of the room.

Hearing Examiner Kolb: Objection overruled.

Mr. Correa: Exception.

By Mr. Dias:

Q. Are you familiar with the Tom Beale station?

A. I am acquainted with Tom Beale and his station, yes, sir.

Q. Do you sell any of your products to him?

A. The only products we sell him are brakes and mufflers.

Q. Do you try to sell him batteries?

A. Yes, sir.

Q. Filters?

A. Yes, sir.

Q. Chemicals?

A. And chemicals, yes, sir.

Q. How long have you been selling to that station, do you have any idea?

A. I have been calling on Tom Beale I think ever since he opened the station.

Q. How long has that been?

A. I would say—I wouldn't say positive, but eight or nine years.

Q. Does he advertise TBA products on the station?

A. Yes, sir.

Q. What products does he advertise?

816 A. He advertises the same line as the other stations, Goodyear tires and batteries, and DuPont chemicals.

Q. Do you know where he gets those products?

A. He gets those from TBA distributor.

Q. Do you know who the TBA distributor is?

A. Fred Glenn.

Q. Are you familiar with the Bill Crowley station?

A. Yes. He has an Atlantic station in Chestnut Hill.

Q. Do you solicit his business?

A. I have called on Bill Crowley for eight or nine years. And I am soliciting for all of what you would call TBA items, batteries, chemicals, and also our lines, mufflers, ignition parts, and antifreeze. The only thing we are able to sell him is a little antifreeze, and maybe once in a while some ignition parts. He doesn't do much repair work up there. He is mainly a service station in the sense of a service station, in that he does lubrication, tire changes, sells batteries, and does that type of work more than repair work.

Q. What brand TBA does he advertise on or about the station?

A. Goodyear brand; he has signs out front and on the windows.

Q. Do you know where he gets those supplies?

A. Fred Glenn.

Q. Are you familiar with the Bill Driskill station?

A. Yes, sir. Bill Driskill is at Germantown and Rount-
fort Road.

817 Mr. Thompson: May we have the spelling of that
name?

The Witness: D-r-i-s-k-i-l-l.

By Mr. Dias:

Q. Will you state the items you sell him?

A. We sell Bill Driskill fuel pumps, mufflers, and bat-
teries—pardon me, not batteries. Ignition parts. That is
all we are able to sell him.

Q. Do you know whether or not he carries other TBA
products?

A. H carries Goodyear's line of batteries and DuPont's
chemical line and Goodyear tires and fan belts.

Q. Do you know where he gets those supplies?

A. From Fred Glenn. All of the territory which I
cover, all of the territory, Germantown, Chestnut Hill and
Roxborough, Manayunk, are covered by Fred Glenn, who
is the Atlantic TBA distributor up there.

Q. I see. Are you familiar with John Bean's station?

A. Yes, John Bean is at Lincoln Drive and Mount
Pleasant Avenue.

Q. How often do you solicit his business?

A. John Bean and myself are very friendly and have
been for quite a number of years. I call on John about
every week. I used to call more often than that. In fact,
we used to have lunch together a couple of times a week.

Q. Does he buy—

A. (Interposing.) He buys ignition parts, brakes,
818 mufflers, and some antifreeze from us, but the chemical
line, I can't sell him that anymore and filters, I can't
sell him those, or I can't sell him batteries.

Q. You say you can't sell him the chemical line any more. Did you at one time?

A. At one time I sold John Bean quite a bit of chemicals. That was about five years ago. I used to sell him oil filters but since the change has been made to Goodyear, why, he sticks pretty much to that line.

Q. Does he advertise Goodyear on the station?

A. Yes, sir.

Q. Are you familiar with the Sid Samans station?

A. Yes. He owns his station. He is across the street, across Lincoln Drive and below John Bean. He has a small station there. He does lubrication and sells the Goodyear batteries and tires. We sell Sid mufflers, and brakes, that is about the only repair work that he does in his station.

Q. Does he carry TBA?

A. He carries Goodyear batteries and tires.

Q. Are you familiar with Lee Asher?

A. Lee Asher is at Germantown Avenue and Washington Lane and he does a very large repair business. When I say repairs, I mean in the minor repair field.

Q. Yes.

A. Motor tune-ups. We sell him ignition parts, we sell him fuel pumps, we sell him brakes and mufflers 819 and tail pipes. I have tried to sell him batteries, tried to sell him chemicals, but he buys from the Goodyear TBA distributor, Fred Glenn.

Q. Does he advertise the Goodyear products on the station?

A. Yes, sir.

Q. Are you familiar with the Amos Atlantic station.

A. Amos Atlantic is at Green and Queen Lane. He handles all of the Goodyear TBA line and we only sell him mufflers once in a while, and we were able to sell him a couple of little tire changing tools laterly, and a fuel pump. The rest of the lines he handles, why, we can't sell him.

Q. And does he advertise Goodyear TBA?

A. Yes, sir. Goodyear TBA and DuPont. We incidentally also carry a DuPont chemical line, number 7 line, which is handled by all these Atlantic dealers, but even though we carry that line, we still can't sell to them.

Q. If you know, are your prices the same as theirs?

A. Our prices are the same as the Atlantic distributor, yes.

Q. What sort of service do you offer?

A. We have the truck available at all times for delivery service, and the truck covers that territory from 8:30 in the morning until 5 o'clock at night.

Q. Do you know whether or not your service is as good as Glenn's?

A. I think our service is better. We deliver to a 820 lot of places as much as two and three times a day.

Q. Are you familiar with the Mahlon Craig station?

A. Yes, he is at 6242 Rising Sun Avenue.

Q. Do you sell him any TBA?

A. We sell him a large amount of brakes and ignition. That is about all we can sell Mahlon. He buys his—he advertises Goodyear and he buys his chemicals, number 7 chemicals and Goodyear tires from the TBA distributor in that territory, whose name is George. I don't know his first name. G-e-o-r-g-e.

Q. Can you name any other stations in your sales territory that you sell to?

A. There are other stations there. I am not very successful as far as selling them anything. I call on them fairly regularly, at least once every two weeks or once a month. There is Wayne Johnson, spelled the same as mine, s-o-n. He is at Ogontz Avenue and Washington Lane.

Q. Do you sell him anything?

A. Fuel pumps occasionally, mufflers occasionally. No chemicals, no batteries, no antifreeze.

Q. Does he advertise TBA on the station?

A. He advertises Goodyear, and DuPont 7 line.

Q. Who is his supplier, Glenn or George?

A. Fred Glenn is his supplier.

Q. Are there any others?

A. Al's Atlantic, at York Road and Cheltham Avenue.

821 Q. What do you sell to that station?

A. The only thing we have been able to sell him, I called him about once a month. We sold him a little equipment for his service truck, a starting unit and a couple of jacks and a battery jumper cables. Those are emergency cables for road service.

Q. How about batteries, did you sell him those?

A. I haven't been able to sell him batteries, chemicals or anything else.

Q. What does he advertise on or about his station?

A. The Goodyear line and the number 7 line.

Q. Are there any others?

A. There are some other Atlantic stations. I can't remember them off hand.

Q. All those that you named, how often did you say you called on those people?

A. I call on them at least twice a month. On most of them. And some of them once a month. And when I call on them, we have a catalogue and I talk to them about all the items which they could possibly sell at a service station, oil filters, shock absorbers, I talk Delco batteries, and the different manufacturers whom we represent at different times have deals or have a Spring offer or a Fall offer, and at those times why, we solicit the service stations more extensively than we do in the in-between seasons because at that time they can sell more of
822 the chemicals and also we solicit them for antifreeze in the Spring and Fall.

Q. Have you any new Atlantic stations opened in your territory recently?

A. No, not in my immediate territory that I know of.

Q. Have any Atlantic stations changed hands recently in your territory? That you know of?

A. None that I know of.

Mr. Dias: That is all, your Honor.

Hearing Examiner Kolb: Any cross-examination?

Cross-Examination by Mr. Ballard.

Q. Mr. Johnson, you said I think that you call on gasoline stations?

A. Yes, sir.

Q. Repair shops?

A. That's right.

Q. New car dealers?

A. Yes, and used car dealers.

Q. How many accounts do you call on all told?

A. I would say about 150 to 175.

Q. And the bulk of your sales are repair parts, aren't they?

A. Yes, sir, and when I say repair parts, I include ignition and shock absorbers and brakes on that.

Q. Yes, parts for minor everyday repairs?

823 A. That is right.

Q. And I suppose the garages are the best customers for that kind of parts, I take it?

A. The garage is our best customer for heavy repair work. What I mean by that is motor parts, ignition parts; brakes, mufflers, and transmission rear parts. The service station is our best outlet for chemicals and antifreeze, apparently because they see the customer more often than the garage.

Q. How many garages do you suppose there are in your list of 150 customers?

A. About half.

Q. And new car dealers and used car dealers would make up how much?

A. Well, I would include the new car dealers and the used car dealers in with the garages. That is the way I figure it, that way, because a new car dealer in his used car department will use the same parts as a garage for servicing used cars for resale and then we also are able to sell new car dealers parts for their own cars, like if they run short or—the car dealers today don't stock parts for their own cars over five years of age, except fast moving parts.

As an illustration, last week one of the agencies in our territory, one of my customers, purchased three rear springs from me for a 1949 automobile. They don't carry them any more.

824 Q. Well now, you say that for a while you were a store manager?—

A. Yes.

Q. What branch was that?

A. See I originally came with Rotzell at the branch at 3917 North Broad which was closed and then they moved over to 5919 Germantown Avenue, or 5921 Germantown Avenue, and after we had been there for approximately a year, my store manager was taken ill and died and while he was sick he had shown me from time to time how to operate the store and I had helped him due to his illness.

Q. Now you call that a store. Is that a retail store? Could I go in and buy something there?

A. You can come in and buy something there and you would purchase it at list price unless you had an order from a garage man or from some company who would be entitled to a discount.

Q. In other words, that store sells to the public, just the way a service station or garage would sell?

A. Yes.

Q. Just to the consuming public?

A. If they come in and ask for it. Our sales on list price are very small. We are mainly wholesalers but we do display the merchandise, which we handle and we do have customers come in from time to time and purchase items.

Q. Now speaking about these various Atlantic 825 dealers, for instance Mr. George Kee, you don't know of course all the suppliers he deals with, do you?

A. No, only all I know is he deals with Fred Glenn and I know he deals with the Bowes Seal-Fast man. I don't know his name. They sell tube repairs.

Q. Do you happen to know that he also deals with Gaul Derr & Shearer?

A. I believe I have seen their salesman in there. You see, in service stations, salesmen from pretty nearly all the parts houses of which there are quite a few in Philadelphia, if they have branches within delivery distance, their salesmen will call on the same people that I call on.

Q. In other words, almost all of these stations that you named for us, other suppliers call on them just the way you do?

A. Yes, sir.

Mr. Ballard: I have no further questions.

Mr. Correa: I have a question or two.

By Mr. Correa:

Q. How many salesmen does the Rotzell Company of yours have?

A. Six — seven.

Q. And we had only three.

A. What?

Mr. Correa: That's all right. No further questions.

Mr. Thompson: May I ask a question off the record?

Hearing Examiner Kolb: Off the record.

826 (Discussion off the record.)

Hearing Examiner Kolb: On the record.

Redirect Examination by Mr. Dias.

Q. You stated on cross-examination that there are sales made over the counter at your store. Do you work on a commission?

A. Yes, sir.

Q. Do you get credit for those sales made over the counter if it is your customer that comes in?

A. If my customer comes into the store, I get credit for any purchases he makes and if he calls up, anything, any customers that I call on, whether they call up, whether I write the order or whether they come into the store, I get credit for their sales.

Q. You also stated that Rotzell has seven salesmen. I think we heard the other day there were five.

A. Well, we have four stores, under the name of E. P. Rotzell Company—

Mr. Correa: (Interposing.) I object to counsel impeaching his own witness.

Mr. Dias: I just want to clarify it, I am not trying to impeach the witness.

Mr. Correa: You are calling attention to the conflict between this witness of yours and another witness of yours; from your many Rotzell witnesses.

827 By Mr. Dias:

Q. Will you name all your salesmen and the area?

A. Well, in South Philadelphia territory, we have Thomas Kernaghan; in the West Philadelphia territory we have Ed Heller; in the Germantown territory, myself; and in the Fairmont, out of the Fairmont store, we have Charles Marriott, who calls on fleets.

Q. Does Mr. Marriott call on service stations, too?

A. He calls on some, but mostly on fleets.

Q. Who is the next one?

A. Herman Rabinowitz. He calls on the same type of accounts that I do.

Q. In what area?

A. He calls on the area north of Fairmont Avenue, Fairmont up to Lehigh, I believe, and then we have a store, it is a sub-store, Suburban Auto Supply, we have a man there by the name of George Walker, and—pardon me. I was wrong when I said seven. It is six.

Mr. Dias: That is all.

Hearing Examiner Kolb: Thank you.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.
(Whereupon, a short recess was taken.)

828 Hearing Examiner Kolb: Come to order.

Mr. Kelaher: I would like to call Mr. Booz to the stand please.

ELMER H. BOOZ, JR. was called as a witness and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Elmer H. Booz, Jr., 312 Prospect Avenue, Secane, Pennsylvania.

Q. Were you at one time an Atlantic lessee dealer, Mr. Booz?

A. Yes.

Q. Where was your station located?

A. Wycombe and McDade Boulevard.

Q. And for how long a period did you operate that station?

A. February 14, 1952, to May 31, 1956.

Q. And prior to that time, did you operate another service station?

A. Yes, a Texas station, two blocks up.

Q. And did you bring any of the merchandise, the TBA merchandise, you had in the Texas station to your Atlantic station when you moved in?

A. Yes, I brought all the tires, tubes, batteries and accessories.

829 Q. And what kind of tires did you bring; what brand of tires?

A. B. F. Goodrich.

Q. What brand of batteries?

A. Goodrich.

Q. Who was the Atlantic representative with whom you discussed the change in operation?

A. Mr. Al Vayda.

Q. Did Mr. Al Vayda make any remarks with respect to the Goodrich tires and batteries?

A. He told me I could bring them up until I depleted the stock of them.

Q. And when you moved into your Atlantic station, what outdoor—was there an outdoor sign located on the station?

A. All there was was Goodyear signs.

Q. And how about the window valance?

A. They were Goodyear too.

Q. And were you, or did you rather, advertise the fact that you were selling B. F. Goodrich tires?

A. No.

Q. And did you have any other brand of tires in stock?

A. Yes; we had some Lees.

Q. And where had you obtained the Lee tires?

A. When the other dealer checked out we bought them off him.

Q. And was there any other brand of tires in the station?

A. Goodyear.

830 Q. Did you advertise the Lee tires?

A. No.

Q. Why didn't you?

A. Well we were mainly selling Goodyears.

Q. About what percentage of your stock at that time was Goodrich tires?

A. About one third.

Q. About what percent was Lee tires?

A. One third.

Q. And was the remaining one third Goodyear tires?

A. That is right.

Q. Now, after you moved into the station, how long did you continue to carry the Goodrich tires and batteries?

A. Until the stock was depleted.

Q. And after that, what brand did you carry?

A. Goodyear.

Q. And while the Goodrich batteries were in your place of business, in your Atlantic station, were you ever visited by a Mr. Arnholt?

A. Yes.

Q. And did Mr. Arnholt make any comment about the Goodrich batteries?

A. He covered the "rich" part on the battery and said, "Now it looks half right."

Q. I guess it was no mere coincidence that the spon-
831 sored brand begins with G-o-o-d.

A. Right.

Q. Did you at any time carry the Bowers battery line?

A. Yes, I did.

Q. And where had you displayed the Bowers battery?

A. Well, I tried to keep them in the heater room.

Q. And where was the heater room?

A. In the back of the building.

Q. And why had you kept them in the back of the building?

A. Well, I had the only key for that.

Q. Was the because you didn't want Atlantic representatives to see the batteries?

A. Well, it wasn't good for them to see them.

By Mr. Kelaher:

Q. Did you at any time purchase from—let me ask you first from whom did you purchase your Goodyear TBA supplies?

A. Mainly from Ed Parris. Approximately 85 percent of it.

Q. I beg your pardon?

832 A. Approximately 85 percent of it.

Q. And could you have purchased Goodyear tires at a lower price than you were paying Mr. Parris?

A. Yes.

Q. Do you recall how long it took for your Goodrich tires and battery stock to become depleted?

A. Oh, I would say approximately about five or six months.

Q. And after that—

A. After all, when a man sees a Goodyear sign up, he expects to buy Goodyear tires, so you try to deplete it as fast as you can and sometimes you give a man a better price on a tire to get rid of it.

Q. And after that you never purchased Goodrich tires or batteries?

A. No.

Q. Now, who was your principal supplier of accessories?

A. Mr. Parris.

Q. And did you purchase accessories from other jobbers or other sellers of TBA in the area?

A. Yes.

Q. Would you name those suppliers, please?

A. V. J. Auto Parts, Auto Gear, and Auto Radiator.

833 Q. And what products did you purchase from V. J. Auto Parts?

A. Mostly Barsleak.

Q. And was any comment ever made by an Atlantic salesman with respect to your Bars stock?

A. Well, they didn't like it on the shelf and I asked if we could put it on the back shelf—

Mr. Thompson: May we have an identification of who the salesman was at the time?

By Mr. Kelaher:

Q. Do you recall approximately when that request was made by Atlantic?

A. I would say in '53, '54, the end of '53 or the beginning of '54. The name I couldn't tell you because we had a rough territory and the salesmen didn't last too long there. I mean, it was mostly price.

Q. Now, can you give us the name of some of the Atlantic salesmen who called on you?

A. Al Vayda, Joe Connelly, Joe Muldoon. I think there was another one in there.

Q. Was there a Mr. Petrison?

A. Well, there's one between Joe Muldoon and Steve Petrison, I believe.

Q. And was it one of those four men who made this comment about Barsleak?

A. Yes.

834 Mr. Thompson: Which one, please, Mr. Kelaher?

The Witness: That I couldn't tell you, after all, I can't remember back that far.

By Mr. Kelaher:

Q. It would be the salesman who was calling on you at the time you specified, is that correct?

A. That would be the one.

Q. Mr. Booz, did any Atlantic representative ever show you what is known as the "black book"?

A. Well, don't state it that way, that sounds pretty bad, it's more or less of a record book.

Q. I mean the color, I don't mean to imply what you are thinking, it's kept in a black binder.

A. Yes, it's a black binder and it's—it keeps all your TBA records in there, your gasoline and oil, what you purchase each month.

Q. Would the TBA—would it show specifically your TBA purchases as an Atlantic dealer?

A. That's right, what you bought from your Atlantic supplier.

Q. And in your case it would show what you bought from Mr. Parris?

A. That's right.

Q. And would it show any other purchases you might have made from other suppliers of TBA?

A. No.

835 Q. And would they ever make any comments about your TBA purchases?

Mr. Thompson: Who is "they" please, Mr. Kelaher?

By Mr. Kelaher:

Q. By "they" I'm talking about an Atlantic representative.

A. They would say, "You're a little low this month, you're going to be a little under this year; can we get it up to show a little bit of an increase," which we always did like to do.

Q. And they would refer—and they were referring to your TBA purchases from Mr. Parris?

A. That's right.

Q. Now, would you state who made such statements to you in the Atlantic organization?

A. I couldn't give you a truthful answer.

Q. Would Atlantic salesmen, Muldoon for example, have made such statements?

A. Well, out of all of them he'd be more than likely.

Q. Did Mr. Parris ever make such statements?

A. No.

Q. But as I understand it they had an accurate record from your purchases from your Goodyear TBA supply point?

A. That's right.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Cross-examine.

836 *Cross-Examination by Mr. Thompson.*

Q. Mr. Booz, am I not correct that you also were the lessee of another Atlantic Station, Naaman's Creek and Meeting House Road in Ogden?

A. That's right.

Mr. Kelaher: I beg your pardon, would you please read the question and answer, I didn't catch it.

(The reporter read the question and answer.)

By Mr. Thompson:

Q. And that was a new station which Atlantic was just opening up when you took it?

A. That's right. That was a brand new station.

Mr. Kelaher: Would you fix the time, please?

Mr. Thompson: I can ask the questions and I will come to it in my own inept way if I may.

Mr. Kelaher: I defer to the distinguished professor of evidence of Pennsylvania.

By Mr. Thompson:

Q. And that I think was about June of 1956, wasn't it, Mr. Booz?

A. That's right; June of '56, and November 15, '56.

Q. And you requested Atlantic to transfer you to that new station, didn't you?

A. That's right, due to price condition along Uycomb Mac Dade Boulevard.

837 Q. That is a tough place for a service station operator, isn't it?

A. That's right.

Q. Price wars all the time?

A. I figured there wouldn't be any out there, but, of course, there wasn't any customers out there either. (Laughter.)

Mr. Kelaher: Would you read the answer, please?

(The reporter read the answer.)

By Mr. Thompson:

Q. After you had been there a few months you had a proposition from Sun and wanted to take that and asked Atlantic to let you out of your lease. Is that about the story?

A. That's correct, it was a much better lease and a much better rent set up, and much more gallorage.

Q. As I understand it Atlantic was mightly sorry to lose you, Mr. Booz?

A. Well, I hope so, because I had good relations with them and I left under good terms. I hope.

Q. I show you, sir—

Mr. Thompson: Would you mark that please? That will be A-4.

(The document referred to was marked Respondent's Atlantic 4 for identification.)

Mr. Kelaher: May we see that?

Mr. Thompson: Yes, indeed. (Handing document 838 to counsel for the Commission.)

By Mr. Thompson:

Q. I show you a document marked A4 identified by the phrase at the top, "Mutual Consent of Cancellation," and ask you whether that is your signature on the document? (Handing document to the witness.)

A. Yes, it is.

Q. And I call your attention to the fact that the document says "Dealer received better offer from competition," and that was the reason why you left Atlantic, was it not?

A. That's right.

Mr. Thompson: I think, sir, I cannot offer this document at this time; I shall have to do so as part of Atlantic's case later.

At that time I think it is understood that I may substitute a photostat?

Mr. Kelaher: That is correct.

By Mr. Thompson:

Q. Mr. Booz, are you old enough to remember the old baseball phrase "Tinkers to Evers to Chance"?

A. No, I'm not quite that old. (Laughter.)

Q. You were Texaco to Atlantic to Sun, weren't you?

A. That's right.

Q. As a matter of fact, a good operator like yourself always has opportunities to go with other companies, isn't that true.

839 A. That's right.

Q. And you and George Hill have a happy partnership together now at a Sun station?

A. Do you realize it's one of the happiest relations we ever had?

Q. Sharing the responsibilities, neither of you have to work quite so hard, do you?

A. Let's put it this way: we are both working just as hard but better pleasure, we don't have as much pressure.

Q. Share the responsibilities?

A. Share the responsibilities and pressure from the company itself.

Q. Sun's not as aggressive as Atlantic, is it?

A. Well—

Mr. Kelaher: What was the question?

A. That's a way of putting it.

Q. Maybe that's why we sell more gasoline here than they do.

A. That's possibly true. We're pumping 50,000 and the station across the street, which is Atlantic, is only pumping 18,000.

Q. I'm sorry to say that I can't say truthfully I wish you luck. (Laughter.)

A. Well, if I may, I mean, this doesn't have any bearing on the case, I know—

Mr. Kelaher: Well, if it doesn't I suggest it not 840 be put into the record.

The Witness: Like a farmer, you have to plant a seed before you can harvest the crop. If Atlantic—

Mr. Thompson: The Examiner wants you to get back to the case, Mr. Booz.

By Mr. Thompson:

Q. Now, Vayda was the first salesman that you had on Mac Dade Boulevard?

A. That's right. He was a very good salesman.

Q. He didn't last as your salesman very long, did he, because Joe Connelly took it over.

A. That's right. Mr. Al Vayda went to a better job.

Q. With the Ford Motor Company?

A. That's right.

Q. And Joe Connelly took over, he was—

A. That's right, he was another good salesman.

Q. And he also went to a better job?

A. That's right.

Q. With Atlantic?

A. That's right.

Q. And then Muldoon took over for a very short time?

A. Very short.

Q. And then was followed by Steve Petrison?

A. No, I think there was another man in there, I'm not sure. He wasn't there too long, maybe it was a vacation for somebody else, but I'm pretty sure there was another salesman in there.

Q. According to records I have—and see if this refreshes your recollection—Joe Connelly was your salesman from July of 1952 until sometime in 1954.

A. Yes.

Q. Now, you did make a reference to an incident which happened with a salesman in '53 or '54. Would it have been Joe Connelly you were talking about?

A. If he was the salesman at that time that is who it would have been. That I can't remember.

Q. Did Joe every try to push you around?

A. No, Joe was very good.

Q. Well, how about Steve Petrison, did he ever push you around?

A. No, he didn't have that much of experience at the time.

(Laughter.)

Q. Fellows like Joe Connelly, Steve Petrison, of course, tried to sell you TBA, didn't they?

A. Pardon, what was that question?

Q. I said, Joe Connelly, Steve Petrison, Vayda, the various salesmen you had, tried to sell you TBA, didn't they?

A. That is right, yes, sir, they did.

Q. As a matter of fact, they carried TBA order books, didn't they?

A. Not all the time. Once in a while they had forgotten them and left them home; mainly that wasn't

their job to sell TBA, they would—DuPont had a run on something, so Joe would take half the territory and maybe Ed Parris would take the other half, the same way with Steve and Ed Parris, they would take half, and you might buy five or ten cases of DuPont or you might get in on a spring dating on tires.

Q. During those promotions and things like the spring dating on tires, the Atlantic salesmen were out trying to sell the Goodyear line, weren't they?

A. Yes.

Mr. Kelaher: Would you restate that question, please. This is getting to be a closed conversation over there, I am sorry to say. I know it is inadvertent. We can't hear what is going on.

(Question and answer read.)

Mr. Thompson: That is all for Atlantic.

Mr. Correa, do you have any question?

Mr. Correa: No questions.

Mr. Kelaher: May we have a moment, your Honor?

Redirect Examination by Mr. Kelaher.

Q. Mr. Booz, on cross-examination you were asked about your relationship with George Hill and you stated that it was very enjoyable because there was less pressure, among other things, there was less pressure from the oil company.

843 A. That is right.

Q. Well, Atlantic is like this gentleman here said, more aggressive, they are after you more to stock. The more stock you have, the more you are going to sell because you have got to sell to get your money to pay for the stock that you have got.

Q. So you are referring to more pressure to purchase Goodyear TBA?

A. That is right. Yes, it would be Goodyear TBA, that is all they sold.

Mr. Kelaher: That is all, your Honor.

Recross Examination by Mr. Thompson.

Q. Are these fellows pretty good TBA salesmen, Atlantic fellows?

A. They have got to be. I was first in the territory; I think Steve can tell you that, in 1954 I was first in tires, second in batteries and third in accessories. And that is out of 28 stations. And I was, I believe, the fourth highest in gallonage.

Q. When you sell TBA it is pretty profitable; you get a pretty good margin on TBA, don't you?

A. Not necessarily. On tires you are working approximately on about—I had it figured out one year there was 19 and a half percent, which isn't very good at all. Of course, you can never sell tires at list price, there is 844 always someone from the Goodyear company or somebody else that is going to knock you down on it. If you could sell from list, you would only have to sell two tires a week, but that is impossible, so you sell a dollar over key and get your ten percent plus your two percent and discount, which comes out approximately to 19 percent, when you figure in your used tires.

Q. Then your Goodyear tire, of course, has to be competitive with the Kelly Springfield next door and the Goodrich tire?

A. Well, the Goodyear tire can't be competitive with Kelly, because we buy Kelly at a cheaper price. We can get quantity prices, which you can't do with Goodyear. You get a flat ten unless you bought some place else besides Ed Parris and then you get 10, five, and two, which I used to buy my white-walls there and my black-walls off Ed Parris. That was the best way I knew of keeping track of it.

Q. How about your mark-up on accessories, isn't that higher than the mark-up on tires?

A. That, too, is also how you buy. If you wait for your sales to come off, why you can buy at approximately 45 percent mark-up on it. If you don't, why it runs around 30 or 33 and a third. It all depends on who you buy it off of.

Q. A service station couldn't operate today without TBA though, could it?

A. No, that is definite. No, they couldn't.

845 Mr. Thompson: Thank you very much.

Further Redirect Examination by Mr. Kelaher.

Q. Mr. Booz, if I understood you correctly, you stated you could buy Goodyear tires at lower prices at suppliers other than Mr. Parris.

A. That is right. I could buy them at ten, five, and two, once in a while 10, 10, and two. And off of Lee you could get three tens and two.

Whether you bought one, 50, or a hundred from Ed. Parris, you would get 10, two, two-percent cash at the end of the month, 30 days.

Mr. Kelaher: That is all, your Honor.

Hearing Examiner Kolb: Any further questions?

Mr. Correa: No questions.

Hearing Examiner Kolb: That is all, thank you very much.

(Witness excused.)

Mr. Kelaher: May we have a short recess, your Honor?

Hearing Examiner Kolb: We will take a recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. Balloran, please.

846 FRANCIS J. BALLORAN was called as a witness for and on behalf of the Commission and, having been first duly sworn, assumed the witness stand and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Francis J. Balloran; 4312 Florida Avenue, Florida Park, Newtown Square, Pennsylvania.

Q. And at one time did you operate an Atlantic service station?

A. Yes, I did.

Q. And were you a lessee dealer?

A. Yes, sir.

Q. And during what period was that station operated?

A. September 23, '53, to January 21, '57.

Q. And where was the station located?

A. Route 252, on Westchester Pike, Newtown Square.

Q. And would you tell us whether you were from Newtown Square—how long did you live there?

A. Forty-one years.

Q. Forty-one years?

A. Originally from Philadelphia.

Q. And—

847 Mr. Thompson: He doesn't look old enough to have been there 41 years.

The Witness: Well, I am just 60, young man.

Mr. Thompson: Thanks for the compliment.

By Mr. Kelaher:

Q. And were you active in civic affairs in Newtown Square?

A. Yes, sir. Scout Master; Fire Chief; Fire President; everything but the Mayor of the Town, pretty near.

Q. And did you serve in the Armed Forces of the country?

A. Both wars.

Q. Both World Wars?

A. Yes, sir.

Q. And did you have any sons who served in World War II?

A. Two; and one daughter, a nurse.

Q. I think you are to be congratulated on your record and your family's record.

Now, you stated that you began operating the Atlantic station in September—did you say September?

A. Twenty-third, yes, sir.

Q. September 23, 1953, and at that time what TBA did you carry?

Did you carry tires?

A. Yes, sir.

Q. Did you carry batteries?

A. Yes, sir.

848 Q. Did you carry accessories?

A. Everything.

Q. And what brand did you carry?

A. I carried Goodyear tires, Goodyear batteries; I carried DuPont accessories. Well, I carried all TBA that was furnished by Mr. Miller, our supplier.

Q. Now, you stated that the Goodyear TBA was furnished by Mr. Miller?

A. That's right.

Q. Why did you buy your Goodyear TBA from Mr. Miller?

A. Well, that was the setup by the Atlantic Refining Company when I first operated the business.

Q. Was it a matter of your own choice?

A. No, sir.

Q. In or about November of 1955, did a Mr. Arnholt and Mr. Hayes visit you?

A. Yes, sir.

Q. And what was the purpose of their visit?

Mr. Correa: Objected to, if your Honor please.

By Mr. Kelaher:

Q. Would you please state the conversation you had with those gentlemen?

Hearing Examiner Kolb: Objection overruled.

A. Do you want me to answer that?

Mr. Kelaher: Yes, you may answer.

849 A. The conversation the main part of that day was that Mr. Arpholt said they would not renew my lease as of January the first, so I wanted to find out why. I asked why, and they couldn't tell me. They just said it was a lot of little things. Well, I had never been a gasoline station operator; I had taken this for my sons in the town and I knew very little about service stations, to be frank about it, only the pulling of the gas, but I figured that was—it was a good company. Their product was good, and I figured I'd take that station and build it for the boys.

Q. How many boys did you have?

A. Four.

I asked for a leave of absence from the U. S. Navy Department to get them started for the first year or two, and then that's what happened. Now, they said they wouldn't renew the lease from January the first, and my object from that point on was to find out why, and I tried all methods to find out.

Q. And at that time did you call on any of your neighbors for assistance in the matter?

A. Yes, sir. Senator George Wharton Pepper, who has been a personal friend of mine for about 40 years.

850 By Mr. Kelaher:

Q. Did you later have a conference with Atlantic officials concerning the matter?

A. Yes, sir. I was sent from Mr. Pepper's office to Atlantic, 260 South Broad Street.

Q. And what happened when you arrived at 260 South Broad Street?

A. Well, we went over with Mr. Brennan and Mr. Sanborne; we went over the different things that happened on the station; up to that time I had never received no letters or no complaints of anything, and Mr. Brennan asked me to hold off until he got some things straightened out, and he would come out to see me, which he did, about 36 hours—the second morning after I was there he came out to the station.

Q. This is Mr.—who are you speaking about?

A. Tom Brennan.

Q. And thereafter, did Mr. Brennan or anyone else from Atlantic come out to see you?

A. Yes, sir. There was Mr. Sanborne with him, and my recollection is that the salesman, Tom Hayes, Tom always came out.

Q. And at that time was anything done about your lease?

Mr. Thompson: Could we fix the approximate date,
851 Mr. Kelaher?

By Mr. Kelaher:

Q. Yes. I thought we had.

Would you state the approximate date you were visited by Mr. Sanborne, Mr. Brennan and Mr. Hayes?

A. I would have to take it from the letter from Mr. Colley.

Mr. Correa: May we inquire what letter? The witness made a gesture, if your Honor please, said the letter to

Mr. Colley there. I just wondered what he was talking about.

(The document was marked Commission's Exhibit 315-A and B for identification.)

By Mr. Kelaher:

Q. Mr. Balloran, I hand you a document identified as Commission's Exhibit 315-A and B and ask you to state what it is. (Document handed to the witness.)

Mr. Thompson: It is polite to show it to opposing counsel.

Mr. Kelaher: I thought after I identified it we would.

A. It was a letter written to Mr. Colley to find out what was happening—

Mr. Thompson: Objected to.

Mr. Kelaher: I just want you to say who it is from and to.

852 The Witness: From me to Mr. Colley, Vice President of Atlantic Refining Company.

By Mr. Kelaher:

Q. What is the date?

A. December 14, 1955.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: I will now offer Commission Exhibit 315-A and 315-B into evidence.

Hearing Examiner Kolb: Any objection?

Mr. Thompson: No objection, but I don't think it has anything to do with the case.

Hearing Examiner Kolb: The letter is received in evidence—

Mr. Correa: I am sorry, if your Honor please. I realize we are phantom respondent here, but I still guess we had better preserve our record notwithstanding that, and our

character is well exemplified by this letter which is apparently a matter between the witness and Atlantic Refining having chiefly to do with the witness' sales of petroleum products and having nothing to do with TBA or the respondent Goodyear, or anything relating thereto. So I think as the respondent Goodyear, the matter is completely immaterial, irrelevant, and incompetent. I would like to note the objection.

853 Hearing Examiner Kolb: The objection will be overruled. The document will be received in evidence as Commission's Exhibit 315-A and B.

(The document referred to, heretofore marked COMMISSION'S EXHIBIT 315-A and B for identification, was received in evidence.)

Mr. Thompson: Are you going to substitute a photostat?

Mr. Kelaher: If that is agreeable we can do that.

By Mr. Kelaher:

Q. Now, this letter, CX 315-A and B, is dated December 14, 1955. Does that fix in your mind the visit of Mr. Sanborne, Mr. Brennan and Mr. Hayes?

A. Yes. It was just about a week later when those men come out.

Mr. Thompson: What was the date of that letter, Mr. Kelaher?

Mr. Kelaher: December 14, 1955.

By Mr. Kelaher:

Q. And at that time were you presented with a three-year lease?

A. Yes, sir.

Q. Did you accept the lease?

A. Yes, I did.

Q. Now, Mr. Balloran, you stated that you person-

854 ally were not too familiar with the service station business?

A. That is true.

Q. Did you have any employees in the service station?

A. Yes, sir, I had nine.

Q. Nine employees?

A. Yes, sir.

Q. And were any of your sons among the nine?

A. Yes, sir, two of them.

Q. Two of your sons?

A. Yes, sir.

Q. And who managed the station, principally?

A. My oldest son was the one that—I started to train him to manage the station by sending him to school and taking over, but he thought police work was better, so he quit the gas and went in the police work.

Q. What was his name?

A. Albert, Albert Balloran. Then I put my next son in.

Q. What is his name?

A. Charles. And left him take over. At that time I was not coming back for about six months.

Q. At that time what—

A. I was knocked out for about six months. I couldn't even go to work for six months.

Q. Did you personally work in the station from time to time?

A. I worked in the station six months from the 41 855 months I had it. I worked in that station 14 to 17 hours a day, seven days a week.

Q. So you did become familiar with service station operations?

A. I bet you.

Q. Now, you stated a few moments ago that you were furnished Goodyear TBA by a Mr. Miller.

A. Ernie Miller.

Q. E. F. Miller. Is he the Goodyear TBA supply point in this area?

A. Yes, sir; on Garrett Road.

Q. When you say that, you mean your purchased Goodyear TBA supplies?

A. That is true.

Q. Did you want to purchase TBA from Mr. Miller?

A. Not truthfully, no.

Q. Why didn't you?

A. Half the time when you called up you couldn't get it. Half the time you called up he didn't have it. If he did, you had to send a man with a truck and waste an hour and a half to go pick it up and bring it back.

Q. Could you have purchased Goodyear tires at a cheaper price in the area?

A. Yes, sir.

Q. What was the name of the supplier?

856 A. Hires and Kocher.

Q. And why didn't you purchase Goodyear tires from Hires and Kocher?

A. Why didn't I?

Q. Why didn't you?

A. I did.

Q. And did you purchase them in large quantities?

A. Yes. Their records will prove that I purchased tires in pretty large quantities.

Q. And did you purchase in large quantities from Mr. Miller?

A. As far as I could go, yes, but the—why I purchased from Hires and Kocher was a simple—I could get any tire I wanted in 20 minutes and I could get them cheaper than I could buy them off of Mr. Miller.

Q. Was anything ever said to you by Atlantic representatives about that situation?

A. No, sir, not offhand.

Q. Now, did you ever purchase any other brand of tires?

A. I practically purchased everything in the tire line. When my customers wanted Firestone, I bought a Firestone tire; if they wanted Royal—it was according to what the customer wanted. I was there to give them service and give them what they wanted.

Q. Were any comments ever made by Atlantic sales-857 men about your purchases of other brands of tires?

A. Not directly, no, sir.

Q. Did you purchase U. S. tires from Harris and Leonard?

A. That's right.

Q. Were such tires advertised, U. S. tires?

A. Not out of my place they weren't.

Q. Where did you keep such tires?

A. Back on the racks, back on the oil racks where they couldn't be seen.

Q. Seen by whom?

A. Any of the Atlantic men that came in there, the bosses.

Q. Who came into your station?

A. Well, the main man that used to come into my station was Mr. Thomas Hayes, my salesman, and Mr. Arnholt would come out once in awhile.

Q. Would they make comments if they saw them?

A. I don't know.

Mr. Correa: I object.

The Witness: I wouldn't know that. I never displayed them; I never displayed any other make of tire.

By Mr. Kelaher:

Q. Did you purchase Lee tires?

A. Yes, sir.

Q. And where did you keep them?

A. On the racks, sir/ The Vice President of that 858 company lives right in my town. If he wanted Lee tires or his customers wanted Lee tires, I purchased Lee tires.

Q. And did you purchase U. S. tires on a regular stocking basis or on a fill-in basis?

A. Possibly all the off-brand tires were bought on the customers fill-in job.

859 Q. Would you state what you mean by "off-brand tires"?

A. Well, I'm handling Goodyear to begin with, if I buy a Royal or Lee or Firestone, or any make, to me that's an off-brand tire.

Q. So that you would only buy that type of a tire on a fill-in basis?

A. That's right. I can give you the men's name that ever bought them tires.

Q. Now was Mr. Miller's service on batteries?

A. The same way.

Q. Same way. What do you mean by that?

A. Well, you could get them or you couldn't get them, so you'd have to go somewhere else to buy them.

Q. Did he have them in stock in his place of business?

A. Not when I wanted them half the time.

Q. Where did you obtain the batteries if you couldn't obtain them from Mr. Miller?

A. Lee Tire, on Lancaster Pike.

Q. Did you always ask Mr. Miller first?

A. It was always a fact in our station that either one of the boys or any one of the fellows helping them, the assistant helping them would call Miller first before anything like that was bought.

Q. I see. What was the reason for that?

A. Well—

860 Q. Why did you call Miller first?

A. When you have a service station and you have men on there, a customer comes in there and wants to know the price of this or that, or what kind of battery, that fellow don't know the price, he's in a wrong position, if he has to run to me to ask for it or to know when to order, why it's wrong, I think.

Q. Who was the salesman who called on you from U. S. Tires, do you recall?

A. That was Bob—I don't know what his last name is.

Q. Would it refresh your recollection to mention that it might have been Bob Drennan?

A. Little Bob Drennan, he was the fellow that always came up there.

Q. And did you purchase anything from—well, did you do any recapping business for Mr. Drennan?

A. Plenty of it.

Q. And at that time was Mr. Miller in the recapping—did he have recapping facilities?

A. Yes. We'd just got a letter notifying us that Miller was going to start in the recapping business.

Q. At what time was that?

A. Oh, Lord, I'll never tell you no more, it was all approximately—all the way up. But I dealt with Harris and Leonard from the first day I—that he came around there.

862 By Mr. Kelaher:

Q. Now, you stated that you left the Atlantic station in January of 1957?

A. Yes, sir.

Q. Would you please state your reasons for leaving the station?

863 A. Pressure.

Q. Pressure?

A. That's right.

Q. What type of pressure?

A. Do you want to go back on the whole story?

Q. Was there any pressure on TBA?

A. The only pressure on TBA is when the monthly thing came around that they could generally tell you every nickel and dime that I bought off of Miller but nothing off of anybody else.

Q. And when you say "they" who are you referring to?

A. My salesman Mr. Hayes.

Q. And would he comment on your purchases from Mr. Miller?

A. Well, he could show me right there in figures what I purchased from him.

Q. And would he ever comment as to whether that was high or low, or so on?

A. Well no, not off-hand, it wouldn't be—it's just a thing of being told that you weren't buying the stuff you bought where you belonged. That's the way it meant to me, I don't know what it meant to them.

Q. And you considered that pressure to buy from Mr. Miller, right?

A. Positively.

Q. Mr. Balloran, did Mr. Miller have recapping 864 facilities when you began business in September of 1953?

A. I wouldn't be able to say that, but if he didn't he'd have them recapped for you, I believe that. I don't know whether he had his own facilities to do that or not, but I know if we sent them in there he'd have them done.

Q. Was it after that that you received the notice to the effect that he had recapping facilities?

A. That's right.

Q. And can you fix in your mind now approximately when that time was?

A. About a year and a half after I opened the station.

Q. And up to that time had you been having your recapping done by Harris and Leonard?

A. Harris and Leonard, right.

Q. Now, did you continue to have your recapping done by Harris and Leonard, by Mr. Miller?

A. Yes, practically all the way through until the last day in what I had left over he took back and returned my money for them.

Q. Who was that?

A. Harris and Leonard.

Q. Now, with respect to your purchases of batteries, in what quantities did you purchase Goodyear batteries from Mr. Miller?

A. Fifteen with one free every time; that's the way it worked out, if you bought 15 you had one free, you got a cheap battery free.

Q. Did you always request that many?

A. No, sir; sometimes we used to send in for two or three, four or five, according to different batteries that was needed in the automobiles. Like to keep so many of each type on hand to fit the different cars.

Q. And if you sent in for two or three as you mentioned, would you sometimes get 15 batteries back?

A. No, they'd try to sell you 15, but you didn't need that many.

Q. And would you sometimes keep the 15 or return them?

A. Yes, I'd keep them. We'd get rid of them, but half the time you'd have them laying around, especially the wet batteries they were the worst to lay around.

Q. They not only tried to sell them to you, they did sell them to you?

A. Well, that was their job.

Mr. Correa: I object, if your Honor please, as to the form of the question. It's cross-examination. The counsel

gets the answer; he doesn't like the question, he starts trying to force the witness to give him an answer. I object to this form of question.

Hearing Examiner Kolb: It's rather confusing, his answer. He said laying around. I think it's proper.
866 The objection is overruled.

By Mr. Kelaher:

Q. Did any of your employees ever have conversations with Mr. Hayes or Mr. Arnholt?

Mr. Thompson: I object to that, sir. How could you possibly know.

Hearing Examiner Kolb: Can you answer yes or no?

The Witness: Yes.

By Mr. Kelaher:

Q. And did such employees report to you about such conversations?

A. They told me just what took place.

Q. And did any of the reports concern TBA?

A. No, they did not.

Q. Are you presently an Atlantic-dealer, Mr. Balloran?

A. Yes, sir. We have a station at Zieglerville, Pennsylvania, Route 29. That's a two pump station.

Q. Are you presently a contract dealer or lessee dealer?

A. I'm my own dealer this time.

Q. What do you mean you are your own dealer this time?

A. No one is going to tell me what to buy or sell from this station.

Q. Was anyone telling you what to buy or sell from the last station?

Mr. Correa: I object, if your Honor please. I
867 think the witness' testimony speaks for itself.

Hearing Examiner Kolb: The objection is overruled.

By Mr. Kelaher:

Q. You may answer.

A. Let me have that question again.

Mr. Kelaher: Will you read the question, please?

(The reporter read the following question:

“Question: Was anyone telling you what to buy or sell from the last station?”)

By Mr. Kelaher:

Q. Did anyone tell you what to buy or sell at the last station?

A. Yes, they did. You couldn't sell anything on that station except what you bought from Goodyear or DuPont or an Atlantic dealer can't sell anything but Atlantic products and the one that its representatives are still supplying. When I went to buy a Firestone or Goodrich tire or anything like that, that was against the rules of that station, I know that. Anybody knows that. The salesman knew it. That's why I left the station.

Mr. Kelaher: That's all, your Honor.

The Witness: If I invest my own money, I want to buy what I want to buy; I don't have nothing against the product, the thing is you have to do certain things and if you want to do that you might as well go to Russia.

868 By Mr. Kelaher:

Q. And you are stating that you had to buy Goodyear TBA from Miller, is that correct?

A. That's true.

Mr. Thompson: Now, are you through, Mr. Kelaher?

Mr. Kelaher: I'm finished.

Mr. Thompson: This is one of the surprise witnesses, your Honor, as you know.

Mr. Kelaher: Your Honor, this is the only surprise witness we have brought in.

869 Mr. Thompson: This is one of the surprise witnesses I understand there are going to some more.

Mr. Kelaher: There is only one in Philadelphia, one in Wilmington.

Mr. Thompson: Under your Honor's ruling I think we may defer cross-examination until Friday—or was that a stipulation with you, Mr. Kelaher?

Mr. Kelaher: We have no objection if it's convenient for the witness to come back.

The Witness: I have to be at a settlement on Friday at 1:00 o'clock, that's at 69 Upper Darby.

Mr. Kelaher: Could you be here later in the day?

The Witness: Yes, sir; but I must be at the settlement for 1:00 o'clock.

Mr. Kelaher: What time would be convenient for you? Three o'clock?

The Witness: Give me an hour to get down here.

Mr. Kelaher: Could you come down in the morning?

The Witness: I'm at Zieglerville tomorrow unless it's absolutely necessary.

Mr. Thompson: I meant Friday morning.

The Witness: Friday morning, as long as I can get back there at the settlement, it's the Land Title—

Mr. Kelaher: If you could you come in any time convenient to you Friday morning. Could you come in at 10:00?

870 The Witness: Right, I'll be here at 10:00 o'clock.

Mr. Kelaher: That is agreeable then. That's all for the present, Mr. Balloran.

Hearing Examiner Kolb: The witness will be excused until Friday morning.

Mr. Correa: Off the record if I may, your Honor.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Correa: If it please the Court: At this time I move the recall for further cross-examination of the witness Matthews and I base my motion upon the following grounds. We were given notice that the witness Matthews would be a witness only on Thursday before he appeared, despite the fact that apparently the witness had given a signed statement to the counsel supporting the complaint as long as four years ago and had not been in the employ of or had not been a lessee of the Atlantic Refining Company since May 7th, well over a month ago.

In view of the shortness of time we were unable, adequately, to search old files relating to the testimony of the witness as respects Goodyear and particularly in respect of the witness' claim that Goodyear, without his consent or commission, and against his will, in fact, had gone into his place of business and installed certain signs.

871 We have now been able to complete the search of these records and the company which under contract was charged with installing these signs in service stations has produced or has furnished us a form on which appears—it is a carbon copy of the form—and on which appears purportedly the signature of Matthews, underneath the legend, a printed legend reading in part: "This installation meets with my entire approval. No damage has been done to my property." Dealers signature, Matthews.

Now, I may say that we have compared the signature appearing hereon with the signature appearing on Commission's Exhibit 294-A and -B, and at least on inspection this appears to be an authentic signature, assuming that the signature on the exhibit is and that was, I believe, identified by the witness as being his veritable signature.

So, for these reasons we wish the recall of the witness for further cross-examination in the nature of impeachment.

Hearing Examiner Kolb: As I recall, Mr. Correa, you asked the witness some questions about the signing of this

document indicating to me at the time that you had some sort of a signed document.

Mr. Correa: No, if your Honor please.

Hearing Examiner Kolb: You should have produced it at the time you asked the witness about it.

872 Mr. Correa: If your Honor please, we did ask the witness whether in his absence, because all we had was his version of the facts at that time, whether in his absence this employee of his who was there had signed a document similar to this because, of course, we knew of the practice, and the witness, as I recall his testimony, said "I don't know. If he did he didn't tell me," which left the matter sort of up in the air. We did not know, of course, at that time that in truth and in fact the witness himself had signed such a document.

Mr. Kelaher: Mr. Examiner, two points I would like to make.

First, to get the record straight, when we notified counsel. I personally made a long distance call on January 17th to Mr. Ballard and to Mr. Mason to notify them that Mr. Matthews would appear as a witness. That was the first day that I knew that he was going to be called as a witness.

Hearing Examiner Kolb: What date was that?

Mr. Kelaher: That was on January 17th—

Hearing Examiner Kolb: January—

Mr. Kelaher: I mean June 17th, which was a week ago, and in so far as the signature is concerned, I would like to call your Honor's attention to the testimony of Mr. Hinderscheid, Vice President in Charge of Sales of 873 Lee. I recall showing him a document with his signature on it and apparently it conformed with his signature on other documents and he stated that he didn't sign it. So, I don't think you can just presume that Mr. Matthews signed this statement.

Mr. Correa: Well, if your Honor please, I submit that in any court in the land you are permitted to offer an identified signature and a questioned document and permit a jury to look at them both and decide, or a judge or any other trier of the fact. I never heard such a ridiculous proposition.

Hearing Examiner Kolb: The witness was called, you were notified a week ahead of time, the witness was examined, cross-examined and released. I think the request comes too late on that at this time.

Mr. Correa: All right.

Mr. Kelaher: I move we adjourn until 2:00 o'clock.

Hearing Examiner Kolb: We will adjourn until 2:00 o'clock.

(Whereupon, at 12:18 o'clock p.m., the hearing in the above-entitled matter was recessed to reconvene at 2:00 o'clock p.m., this day.)

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Afternoon Session.

(2:10 p.m.)

Hearing Examiner Kolb: Come to order.

Mr. Dias: I call Mr. Franks.

WILLIAM LEE FRANKS, was thereupon called as a witness for the Commission and having been duly sworn, testified as follows:

Mr. Correa: If your Honor please, before we get into this witness, there is one matter of straightening out the record that I would like to make clear.

Just before we adjourned for lunch, I made a motion for the recall for further cross-examination of the witness Matthews and stated in the record my ground.

Now I should like that statement to stand as an offer of proof and in connection with that statement or in the course of that statement I referred to a paper signed by the witness Matthews, and I should like to have that paper at this point marked for identification, to stand as a part of my offer of proof.

Hearing Examiner Kolb: The document will be marked Respondent's exhibit G-1 for identification.

(The document referred to was marked Respondent's exhibit G-1 for identification.)

Hearing Examiner Kolb: Let the record show the 875 document marked for identification Respondent's exhibit G-1 will be received as part of the offer of proof.

(The document referred to, heretofore marked RESPONDENT'S EXHIBIT G-1 for identification, was received as an offer of proof.)

Direct Examination by Mr. Dias.

Q. Mr. Franks, will you state your full name and business address?

A. William Lee Franks, 8 East 9th Street, Chester, Pa.

Q. And the name of your company?

A. Auto Parts and Radiator Company.

Q. How long have you been with Auto Parts, Mr. Franks?

A. Five years.

Q. And in what capacity, sir?

A. Approximately two and a half years on the inside as a counter man and two and a half years on the outside as a salesman.

Q. Which two and a half years have been on the road?

A. The past two and a half years.

Q. What is your sales territory right now?

A. My sales territory right now is Media, Newtown

Square, West Chester, Folsom, Springfield, Paoli, Bryn Mawr.

Q. Did you have a different sales territory at one time?

A. Yes, I did.

Q. What was that, and over what period?

876 A. That was prior to January 1st, of this year.

Q. And what was that territory?

A. That territory consisted of Clifton Heights, Drexel Hill, Collingdale, Springfield, Folsom, and Woodlyn.

Q. And you worked that territory about a year and a half, is that correct? How long did you work that?

A. Just about two years.

Q. Well, confining your remarks then to that period of time prior to January 1, 1957, what type customers did you solicit?

A. Service stations, automobile dealers, independent repair shops, body shops and contractors.

Q. And among the service stations, were there Atlantic stations?

A. Yes, sir, there were.

Q. Can you tell us about how many Atlantic stations there were in your territory?

A. Nine.

Q. Did you sell to any of the nine?

A. Yes, sir, I did.

Q. How many?

A. Six.

Q. And can you tell us how often you called on the six?

A. Very faithfully once a week.

Q. And what about the other three?

A. Periodically.

877 Q. Did you call on them periodically during the two-year period?

A. Not during the whole two-year period.

Q. Have you ever sold those three?

A. No, sir.

Q. Of those three, referring to those three, did they handle TBA products?

A. Yes, sir.

Q. Do you recall the type brands they had, the brands they handled?

A. Goodyear tires, batteries, fan belts, hoses.

Q. Was that true of the three?

A. Yes, sir.

Q. Now the six that you sell to, can you tell us what you sell to each of them and can you name the stations?

A. Bryant's Atlantic station, MacDade Boulevard and Fairview Road in Woodlyn, Pennsylvania.

Q. Bryant?

A. Yes.

Q. What did you sell to that station?

A. The only thing I sell Bryant is mufflers, tail pipes, brakes, and so forth. I sell him no TBA items.

Q. Do you attempt to sell him those items, that is, TBA items?

A. Yes, sir.

878 Q. Does Bryant handle TBA?

A. I beg your pardon?

Q. Does he handle TBA?

A. Yes, sir.

Q. What brand?

A. Goodyear tires, batteries, fan belts, Prestone anti-freeze; DuPont chemicals.

Q. Can you name another station?

A. Russell's Atlantic station.

Q. What is his address?

A. 2319 Marshall Road, Lansdown, Pennsylvania.

Q. And what do you sell to him?

A. Mufflers, tail pipes, ignition.

Q. Have you tried to sell batteries and accessories to that station?

A. Yes, sir.

Q. Have you been able to sell those to him?

A. In the year 1955, when I called on Smedley Russell, I received a pre-season order for Prestone antifreeze from him. During October of 1956 when I returned to get another pre-season order for the winter of 1956, at the time he wasn't ready to talk about antifreeze. A few weeks later I walked in and he had 10 cases sitting on the floor and I asked him why he didn't buy them from me, and his explanation was that they put pressure on him, and he 879 in turn still gave me an order for 10 cases of antifreeze.

Q. Who was he referring to when he said they put pressure on him?

A. The Atlantic distributor.

Q. Referring back to that Bryant station, can you give us some idea of your volume of sales to that station and the number of times you called on them?

A. Yes. In 1955 I called on him 18 times. I received total sales of \$477.72.

Q. And in 1956?

A. In 1956 I called on him 20 times and I received \$334.28.

Q. How about Russell's?

A. Russell's Atlantic station, in 1955 I called on him 29 times. I received \$954.43 worth of business.

In 1956 I called on him 50 times and I received \$1,865.11 worth of business.

Q. Can you name another station?

A. A & E Atlantic Station.

Q. What is their address?

A. Springfield Road and Ridley Avenue, Clifton Heights, Pennsylvania.

Q. And what do you sell to that station?

A. Brakes, mufflers, hard parts.

Q. What are hard parts?

A. Hard parts are upper control pins, king pins—

880 Q. (Interposing.) Yes. Are hard parts and repair parts synonymous? Do they mean the same thing?

A. Yes.

Q. Did you attempt to sell him batteries or accessories?

A. No, sir, I didn't.

Q. You did not?

Does he advertise on the station TBA products?

A. Yes, he does.

Q. And what is it he sells?

A. Goodyear tires, batteries, fan belts, hoses, Prestone antifreeze.

Q. Did I understand you to say you didn't attempt to sell him batteries?

A. No, sir.

Q. Or filters?

A. No, sir.

Q. Will you name the next station, please?

A. The next station is an independent station, Gill's Atlantic station, 2142 Darby Road, Havertown, Pennsylvania.

Q. And what products did you sell to Gill's?

A. Fan belts, hoses, ignition, brakes, chemicals, wire cable, antifreeze, equipment.

Q. And your volume of sales to him, do you have that?

A. During the year 1955 I called on him 36 times, I received a total of \$1,706.65 worth of business.

881 And in 1956, I called on him 52 times, and I received \$2,593.25 worth of business.

Q. Does that station handle TBA?

A. No, sir.

Q. It does not. Do they have any advertising at all about the station?

A. No, sir.

Q. Do you have another Atlantic station?

A. Herbey's Atlantic station, Burmont Road and Market Street, Drexel Hill, Pennsylvania.

Q. And your sales to that station?

A. During the year 1955 I called on him 29 times. I received a total of \$314.86. During 1956 I called on him four times. I received a total of \$534.44.

Q. And what type products did you sell to that station?

A. Mufflers, hard parts, brakes.

Q. How about batteries and accessories?

A. No, sir.

Q. Did you attempt to sell those to that station?

A. Yes, sir.

Q. Does that station carry TBA? Do they have tires in that station?

A. I am not sure. I think he has Goodyear tires and fan belts and hoses.

Mr. Ballard: I move to strike the last answer. The 882 witness is just hazarding a guess.

Hearing Examiner Kolb: Motion to strike denied.

By Mr. Dias:

Q. That is five. I believe you have one more station, is that correct?

A. Way's Atlantic Station, Township and State Road, Drexel Hill, Pennsylvania. During the year 1955 I called on him 11 times and received a total of \$25.42 worth of business. During 1956 I called on him 31 times and received a total of \$144.29 worth of business.

Q. And what were the type of products you sold to that station?

A. Car rugs, fuses, Every Ready bulbs, and that is about all.

Q. Did you attempt to sell any batteries to him?

A. No, sir.

Q. You did not?

A. No, sir.

Q. How about filters and other accessories?

A. No, sir.

Q. On these stations, Bryant's, Russell's and Herbey's, you have attempted to sell them your batteries and accessories and so forth, is that correct?

A. Yes, sir. Herbey's Atlantic is an independent station.

Mr. Correa: Is that the one the witness said didn't sell any TBA?

Mr. Dias: No.

883 By Mr. Dias:

Q. Referring to Bryant, you attempted to sell him batteries and accessories, did you?

A. Yes, sir.

Q. And they refused to buy?

A. Yes, sir.

Q. Did they give you any reason why they wouldn't buy?

A. Bryant said to me a couple of times "I have to 884 buy from Parris or I will be put out of my station."

Q. When did he tell you that?

A. July of 1956. During the month of October of 1956 when I tried to get a pre-season order of Prestone anti-freeze, he told me that he could not give me an order for even one case because Ed Parris knew how much he used, he was going to send it in to him and he still had antifreeze on the shelf left over from the year 1955.

Q. Who is Parris?

A. Ed Parris is the Atlantic distributor.

Q. And is he the Atlantic distributor throughout your entire territory?

A. To the best of my knowledge, sir.

Q. Now you mentioned that you attempted to sell batteries and accessories to Russel's. Did Russell give you any reason for not buying batteries, or accessories?

A. The only reason Russell give me is "I have to play ball with them."

Q. With whom?

A. Ed Parris.

Q. Can you state when he made that statement?

A. That was during the month of July 1956. The incidents I talked about of the antifreeze was during October.

Q. Now, October 1956, did that relate to Bryant's or Russell's? I understood it related to Bryant.

885 A. It relates to Russell.

Q. Russell's?

A. Russell's.

Mr. Correa: Could I have that last question and answer read, if your Honor please?

Hearing Examiner Kolb: Read the question and answer.

(The reporter read as follows: "Qestion: Now, October, 1956, did that relate to Bryant's or Russell's? I understood it related to Bryant. Answer: It relates to Russell. Question: Russell's? Answer: Russell's.")

Mr. Correa: The man said Bryant said something. How can that relate to Russell?

Mr. Dias: I find now he originally testified in that regard and I lost track of it, in respect to Russell.

Mr. Correa: It doesn't make sense.

By Mr. Dias:

Q. To clarify it, did you have a similar experience with both Bryant and Russell?

A. Yes, sir, I did.

Q. And they both occurred during October, 1956, is that correct?

A. On the Prestone antifreeze incident, yes, sir.

Q. Does your company furnish delivery service?

A. Yes, sir.

Q. In your opinion are your products, your batteries and accessories, competitive with those Good-year products sold by Parris?

Mr. Correa: I object—

The Witness: (Interposing.) Yes, sir.

Mr. Correa: I object to the question and move to strike the answer in view of the witness having answered before I had an opportunity to object on the ground that no proper foundation has been laid. The witness has been asked to give an opinion without the slightest effort or even pretense, shall we say, of qualifying him as expert in any way.

Mr. Dias: I think the witness testified, your Honor, that Parris was the distributor in his territory. He must know whether or not he runs into his competition along the line.

Mr. Correa: I submit that that is complete non sequitur. Why must he know? He must know if he knows and if he knows, bring it out.

Hearing Examiner Kolb: Objection overruled. Motion to strike denied.

Mr. Dias: Did you answer that question?

Mr. Correa: He answered the question before I had a chance to object.

Hearing Examiner Kolb: He answered the question.

Mr. Dias: That is all, your Honor.

Hearing Examiner Kolb: Cross-examination?

887 *Cross-Examination by Mr. Ballard.*

Q. Mr. Franks, you were refreshing your recollection from a document there, were you not?

A. Yes, sir, these are my personal notes. (Handing to Mr. Ballard.)

Mr. Ballard: Thank you. (Returning to witness.)

By Mr. Ballard:

Q. Mr. Franks, how many accounts do you solicit regularly, of all kinds?

A. 276.

Q. Are the majority of those accounts service stations?

A. No, sir.

Q. Do you know what brand of antifreeze Ed Parris sells?

A. Yes, sir.

Q. What brand is it?

A. Prestone Antifreeze.

Q. He sells Prestone?

A. Yes, sir.

Q. Do you know what brand of antifreeze the Atlantic Refining Company sells?

A. DuPont's.

Q. DuPont?

A. Yes.

Q. And you yourself sell—

888 A. Prestone antifreeze.

Q. I think you said that you were a counterman for two and a half years?

A. Yes, sir.

Q. Does that mean that your company runs a retail store as well as your activities as a salesman?

A. Yes, sir.

Q. Where is that store located?

● A. 8 East 9th Street, in Chester, Pennsylvania.

Q. Now all of the incidents you told us about, or all these customers you told us about, Bryant's Russell's, A & E, Gill's, Herbey's and Way's, those were your customers prior to the first of this year?

A. There is a few of them in there that are still my customers. A & E Atlantic I no longer call on. Gill's Atlantic I no longer call on. And Russell's Atlantic I no longer call on.

Q. That is because they are out of your territory?

A. Now, because they are out of my territory.

Q. Now, Mr. Franks, you have testified that a number of these stations purchased some or all of their TBA from Ed Parris, is that right?

A. Yes, sir, to the best of my knowledge.

Q. Is Bryant's one of those stations?

A. Yes, sir.

889 Q. Do you know where else Bryant purchases TBA?

A. No, sir.

Q. Do you know who else calls on him?

A. No, sir.

Q. But there are other TBA salesmen who do call on Bryant's?

A. Not to the best of my knowledge. I know there are other jobbers calling on him.

Q. Do you know which ones?

A. Yes, sir. Would you like me to name them?

Q. Yes.

A. Chester Auto Parts, Delaware County Motors, V. J. Auto Parts, and I guess that is about it.

Q. Would the same be true of Russell's, about the same group call on him?

A. No, there would be a different group calling on him.

Q. Could you tell us who would call on him?

A. Burrion Auto Supply.

Q. Who else?

A. Gaul Derr and Shearer, Clifton Auto Parts, Burmont Auto Supply.

Q. You wouldn't know how much those suppliers sell to those stations, would you?

A. No, sir.

Mr. Ballinger: No further questions.

Mr. Correa: I have only one question.

890 By Mr. Correa:

Q. Is Newtown Square in your territory?

A. Yes, sir.

Q. Did you ever call on a Mr. Ballaron?

A. No, sir.

Mr. Correa: No further questions.

Mr. Dias: That is all.

Hearing Examiner Kolb: That is all, Mr. Franks.
(Witness excused.)

Mr. Kelahe: Could we have a short recess?

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: Come to order.

Mr. Correa: If your Honor please, in connection with the testimony of the last witness, I believe there is a little confusion that ought to be cleared up in the interest of all of us.

I believe it is the fact, and indeed I think there was an objection made by one of counsel supporting the complaint sometime back on this ground, that antifreeze is shown by the Commission exhibits not to be embraced within the scope of the sales commission plan or agreement between Atlantic and Goodyear, that is, Prestone antifreeze. Am I correct on that?

Mr. Kelahe: That is my understanding, your
891 Honor, that Atlantic itself however sells antifreeze directly to the service stations. Is that correct?

Mr. Ballard: That is correct. Prestone antifreeze.

Mr. Correa: Of course Goodyear is not interested in what Atlantic sells to its stations directly and I don't think the issue is in this case.

Furthermore, I understand and perhaps counsel is informed on this, that Ed Parris in fact does not wholesale any kind of antifreeze.

Mr. Kelaher: Actually I am not informed on that. I would be glad to answer that if I could.

Mr. Correa: I thought perhaps you knew of that fact. We will show it in due course.

Mr. Kelaher: I would like to call Mr. Heald.

FELIX B. HEALD was thereupon called as a witness for the Commission and having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Please state your name and home address.

A. Felix B. Heald, 1870 Eckard Avenue, Arlington, Pennsylvania.

Q. Were you at one time with Atlantic Refining Company, Mr. Heald?

A. Yes, sir.

892 Q. How many years?

A. A little over 20.

Q. And when did you leave Atlantic Refining Company?

A. The first of April, 1951.

Q. Immediately prior to that time, what was your position with Atlantic Refining Company?

A. Well, it was generally known as TBA supervisor.

Q. What section or what area?

A. New Jersey.

Q. Any particular section of New Jersey?

A. The southern part of New Jersey and also part of Delaware County.

Q. Part of Delaware County, in Pennsylvania?

A. That is right.

Q. Now after you left Atlantic, did you organize a jobbing concern?

A. Yes, sir.

Q. What was the name of that concern?

A. F & C Automotive Specialties, Incorporated.

Q. And when was that company organized or started in business?

A. In May of 1951.

Q. Would you please describe the business, what type of products you carried?

A. Well, it was a specialty jobbing business. I had a warehouse distributorship on three lines, namely, 893 Exide batteries, R. M. Hollingshead and Thermoid.

Q. What was the second one?

A. R. M. Hollingshead Company in Camden. They were warehouse deals that enabled me to sell to other jobbers on those three lines. The other lines I bought on a jobbing basis or where I didn't think there was enough volume, I bought on a so-called sub-jobbing basis.

Q. Would you please state which products you carried as a sub-jobber?

A. Fram—

Q. Fram? What products would that be?

A. Cartridges.

Q. Oil Filters?

A. Yes, sir. I bought on the bottom deal on Ever Ready and a few other lines. But the main lines were those three. I first mentioned.

Q. Did you handle tires?

A. Yes, sir.

Q. What brand?

A. Lee tires.

Q. And were the brands you handled all nationally advertised brands?

A. Yes, sir, nothing else.

Q. What was the marketing area of F & C Automotive Specialties?

A. Well, the lower part of Montgomery County, and

894 New Jersey surrounding the Camden area, including Morrestown and Woodbury and Merchantville, and some in Philadelphia, not too much in the city.

Q. Do you have any delivery trucks?

A. Yes. I had a station wagon that I used as a delivery truck.

Q. And were you, yourself, an outside salesman for the concern?

A. Yes.

Q. And did you travel this marketing area you just described?

A. Yes, sir.

Q. Was your company generally competitive as to price, quality and service with other sellers of TBA products?

A. Oh, yes.

Q. And what classes of customers did you sell to?

A. Gas stations, repair shops, car agencies.

Q. Did you call on Atlantic service stations?

A. Incidentally, I did forget to say that I put up a chemical line of four items, under my own brand, a car wash, a white wall cleaner, and what I called Speedy Wash and also a rubber cleaner, which I put up myself.

Q. When you say put up yourself, does that mean you prepared it?

A. That's right.

Q. And would that be classed as accessory items?

895 A. That's right, I would say so.

Q. Now I believe there is a question pending.

Did you call upon Atlantic service stations?

A. I called on all of them, including Atlantic.

Mr. Thompson: I didn't understand the answer.

The Witness: I called on all service stations that I thought I could do business with. The Atlantic stations were pretty desirable because generally they had more business than the others, Atlantic, Sun and Standard.

By Mr. Kelaher:

Q. At the time you began operations, had Atlantic begun its sponsorship of the Goodyear TBA line in your marketing area?

A. They were just starting about that time.

Q. Was there a time when you were able to sell or when you did sell Lee tires, Exide batteries, Thermoid products, Fram products, and your other lines to the Atlantic service stations?

A. Yes, sir.

Q. During what period were you able to make such sales?

A. That was generally during 1951, probably into January of 1952.

Q. What happened after January of 1952?

A. It stopped.

Q. And did you at one time solicit the business of Mr. Charles Lott in Morrestown, New Jersey?

896 A. Yes, I did.

Q. And did you at one time sell to Mr. Lott?

A. Yes, sir.

Q. What products did he purchase?

A. He purchased several different products and he bought fan belts from me and I had a man come down from Trenton to resleeve them.

Q. What brand?

A. Thermoid belts.

Q. Who was the man who came from Trenton?

A. A representative of the Thermoid Rubber Company.

Q. Is their factory in Trenton?

A. Yes.

Q. What happened after that?

A. The next time I got there, they were all back to Goodyear again.

Q. Did you have any conversation with Mr. Lott concerning Thermoid products?

A. He asked me as a personal favor, he said, it embarrassed him for me to come in there and asked me as a personal favor would I desist and I said sure.

Q. So thereafter he did not purchase any TBA from you?

A. No.

Q. Why would it embarrass him for you to go in there?

Mr. Thompson: I object, sir.

897 By Mr. Kelaher:

Q. What was the substance of his conversation?

A. I am afraid I couldn't repeat it at the moment.

Q. Did you at one time call on a Gus Mapes?

A. Well, Gus Mapes, I used to go to Ocean City every summer and I have known him for many many years. And if he wanted to buy a few things, he would drop me a line, and when I went to the seashore, I would take them to him.

Q. Did he purchase Lee tires?

A. Yes.

Q. Exide batteries?

A. Yes.

Q. Car wash?

A. I sold him Speedy car wash, which can be used as a car wash.

Q. Did he continue to purchase those products from you?

A. No, he stopped.

Q. Did he give you a reason why he stopped?

A. He said that the supervisor there had really given him quite a hard time.

Q. The supervisor for which company?

A. Atlantic Refining Company.

Mr. Thompson: If your Honor please, this testimony is of course taken not to prove the fact, but really as state of mind testimony? Otherwise, of course I object to it.

898 Hearing Examiner Kolb: I think it is all right.

By Mr. Kelaher:

Q. Did Mr. Mapes make reference to any particular—

Mr. Thompson: Would you mind confining this—the acoustics in this room are rather bad and I have heard that name several times, but I haven't gotten it.

The Witness: Mr. Mapes, M-a-p-e-s.

Mr. Thompson: Thank you.

By Mr. Kelaher:

Q. Mr. Mapes, did he state the name of the Atlantic representative?

A. Why, he used th name of Mr. Kramer.

Q. Who was Mr. Kramer?

A. He was assistant supervisor in New Jersey, as I recall.

Q. Do you recall who he was assistant to?

A. Mr. Esbach.

Q. Mr. Heald, about what time did this incident occur?

A. This was in 1953.

Q. 1953?

A. Yes.

Q. And did Mr. Mapes discontinue purchasing the TBA from you?

A. Yes.

Q. Do you recall calling on a Lloyd Martin, Rising Sun Avenue and Godfrey Street, Philadelphia?

899 A. Yes.

Q. Did you sell TBA products to Mr. Martin?

A. I sold him quite a little.

Q. What type of products did you sell him?

A. Oh, generally most everything I had, until he ap-

proached me about—he had some obsolete radiator hoses, Thermoid hoses and he told me if I would arrange with the Thermoid factory, so he could exchange it for the more modern type of hose, he would buy fan belts from me and they agreed to send a man down to resleeve them and the next time I got there, it was all Goodyear again.

Q. When you talk about resleeving, you are referring to the change of brand name?

A. That is a practice in the business.

Q. Mr. Martin, did he continue to purchase TBA from you?

A. No. He said the pressure was too much.

By Mr. Kelaher:

Q. Do you recall the conversation he had with you?

A. I don't think so.

Q. Do you recall when he stopped purchasing TBA from you?

A. It was in 1952..

900 Q. Do you recall selling or soliciting the business of a Mr. —

Mr. Thompson: I move to strike the remark about pressure from the record.

Hearing Examiner Kolb: Motion to strike denied.

Mr. Thompson: But there was no foundation laid for the statement, sir.

Hearing Examiner Kolb: There was an objection and a motion to strike at the time the question was asked, and I ruled on that. So what the pressure was, we don't know and we are not concerned with that statement.

901 By Mr. Kelaher:

Q. Getting back to Mr. Martin. What TBA products was he carrying at the time he made this statement to you?

A. Well, he was carrying Goodyear tires. I never sold him any tires, nor batteries, but I sold him practically everything else.

Q. Was he carrying the Goodyear TBA line?

A. Yes, sir.

Q. And did he have Goodyear identification on his station?

A. Oh, yes.

Q. Now, do you recall soliciting the business of a Bob Rockfeller, Carlisle and Hunting Park Avenue, Philadelphia, Pennsylvania?

A. Yes, sir.

Q. And did you sell any TBA products to Mr. Rockfeller?

A. I sold him only car wash.

Q. And how were such deliveries made?

A. By truck.

Q. Did Mr. Rockfeller always accept delivery when you brought the car wash?

A. Well, there was one time when I delivered it he just waved me out and afterwards he told me the Atlantic salesman was in there.

Q. Well, when he waved you out did you go out and return later?

902 A. I just didn't go in, he just waved through the window.

Q. Now, do you recall soliciting the business of a Denny Denshaw, Decatur and Frankford Avenues, Philadelphia, Pennsylvania?

A. Yes, I did.

Q. Did you sell TBA products to Mr. Denshaw?

A. Yes, I did.

Mr. Thompson: Is this Denshaw, Benshaw, Henshaw?

Mr. Kelaher: Denshaw to rhyme with Denny.

The Witness: I sold him about everything.

By Mr. Kelaher:

Q. He bought Lee tires and Exide batteries?

A. Yes.

Q. Did he stop buying TBA from you?

A. Yes, he did.

Q. And did he give you a reason for stopping?

A. Well, in April of '52 he gave me an order for 200— I think I have a memorandum on it here. April the 12th, \$222 and he called me up and told me—

Q. What did that consist of?

A. It was tires and batteries only.

Q. Lee tires and Exide batteries?

A. That's right.

Q. He called you—will you proceed?

A. He called me up and told me that there were 903 four Atlantic men over there and told him to send the tires back and asked me if I would mind. In the meantime by the time I got there he had sold some, but I took back merchandise to the extent of \$162 rather than embarrass him.

Q. And thereafter, did Mr. Denshaw stop buying from you?

A. Very little, practically none.

Q. And what TBA was Mr. Denshaw selling in his station primarily?

A. Well, he was not selling the Goodyear filters, he was selling Fram filters which I was selling him.

Q. Was he selling Goodyear tires?

A. Yes, he had Goodyear tires.

Q. Was he selling Goodyear batteries?

A. No, he didn't have Goodyear batteries, he eventually did.

Q. What identification did he have in his station?

A. Well, of course all the Atlantic-owned stations have the Goodyear identification.

Q. Approximately how many Atlantic stations did you at one time sell to?

A. Well, I would say in the neighborhood of 20, possibly more.

Q. And did you lose the business of—

A. I lost them all eventually.

Q. Who were the Goodyear TBA supply points in 904 the area in which you served?

A. There was one in Westville.

Q. Westville, New Jersey?

A. Yes.

Q. Do you recall his name?

A. It was John something—his last name escapes me. There was one in Germantown.

Q. Would that be Mr. Glenn?

A. Yes.

Q. Was Mr. Parris a supply point in your area?

A. No, I didn't sell in his territory.

Q. How about Mr. Miller? E. Miller.

A. I didn't sell in his territory.

Q. Well, Mr. Heald, you stated that all Atlantic Service stations carry Goodyear TBA identification, is that correct?

A. Well, that was my experience.

Q. I mean based on your experience.

A. Based on my experience.

Q. Based on your experience at the time you were TBA supervisor for Atlantic what identification did Atlantic stations carry?

Mr. Thompson: I couldn't hear your question, Mr. Kelaher. The acoustics are bad.

(The reporter read the pending question.)

The Witness: They carried Exide when I was there.

905 By Mr. Kelaher:

Q. And Lee tires?

A. Yes.

Q. Based on your experience was there a change-over in that market area from Lee tires and Exide batteries to Goodyear TBA?

A. Yes.

Mr. Kelaher: No further questions, your Honor.

Hearing Examiner Kolb: Cross examine.

Mr. Thompson: May we have a minute to confer with counsel?

Hearing Examiner Kolb: Yes.

Mr. Correa: May we have a moment's recess, if your Honor please?

Hearing Examiner Kolb: Yes. We'll take a recess.

(Thereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: Mr. Examiner, before cross begins I have one further question to ask the witness.

By Mr. Kelaher:

Q. How long did F and C Automotive Specialties, Inc., remain in business?

A. Four years.

906 Q. Do you recall the termination date or approximately the termination date?

A. January 31, '55.

Mr. Kelaher: That's all, your Honor.

Cross-Examination by Mr. Thompson.

Q. Sir, you tried to sell in quite a large geographical area, did you not?

A. Fairly so, yes.

Q. It's a pretty big territory, isn't it, all the way from Morrestown down to Delaware county?

A. I didn't sell in Delaware County, I think I stated that.

Q. I thought I understood you to say that was when you

were with Atlantic. You tried to take Montgomery, Philadelphia, and Bucks County?

A. That's right. The explanation of that, I worked generally around home and one day a week I went over to Jersey.

Q. But you worked generally around your own home and spent one day calling on accounts over in New Jersey?

A. That's right.

Q. Sir, weren't you slightly undercapitalized in this business?

A. Yes.

Q. And you were handling your deliveries with one 907 station wagon, I think you said?

A. That's right.

Q. That is a pretty tough deal to compete with the big wholesalers, isn't it?

A. It is. Of course, my son went with me in the beginning and I was relying on a fast start and I did get one but he was called back and sent to Korea after three months. That left me with the business.

Q. He was a lieutenant in the Marines, wasn't he?

A. Air Force.

Q. You know, of course, you are awfully well thought of down in Atlantic?

A. I hope so. I think well of them.

Q. There are a lot of nice things in the file about you.

A. Good.

Mr. Thompson: That's all I have, sir.

Mr. Correa: I have no further questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all Mr. Heald.
(Witness excused.)

Hearing Examiner Kolb: Is that all you have?

Mr. Kelaher: Yes, your Honor.

Hearing Examiner Kolb: Before we adjourn I would

like to correct a ruling that I made on the record yesterday with reference to Mr. Correa's objection, I believe, to Commission's Exhibit No. 306-A, in which I admitted the document subject to objection.

Of course, that can be considered two ways. One of them is that I have overruled the objection but by specifying it might be interpreted as being a right to make a motion to strike later on in the case, I don't want to have that impression left, so I wish to strike that provision and subject to objection and simply overrule Mr. Correa's objection to the document.

Mr. Correa: And I take it, so that the record may be clear, your Honor understand that so far as we are concerned, speaking for the respondent Goodyear, our objection still stands of record.

Hearing Examiner Kolb: Your objection stands of record.

Mr. Correa: And the evidence is received over our objection?

Hearing Examiner Kolb: Over your objection.

Mr. Correa: And furthermore, on the matter of motion to strike, we conceive it to be our right to make a motion to strike any evidence which has been received over our objection at any time when we could conceive there to be grounds for such a motion.

Hearing Examiner Kolb: But I am not inviting such a motion.

Mr. Correa: I understand. We don't always need an invitation, if your Honor please.

Hearing Examiner Kolb: The hearing is adjourned until 9:00 o'clock tomorrow morning.

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: If your Honor please, at the close of

the direct examination of Mr. Connell, the Vice President of the Electric Storage Battery, day before yesterday, I reserved the right to cross-examination and intimated at the time that if staff counsel were not planning to call Mr. Findley of the Storage Battery Company, I would probably waive cross-examination.

In view of the fact that Mr. Kelaher stated yesterday that they were not calling Mr. Findley, I will waive cross-examination of Mr. Connell.

Mr. Correa: And I will also; if your Honor please.

Hearing Examiner Kolb: He is not expected to return.

Mr. Dias: No, he is waiting on call, as I understand it.

Mr. Correa: I think that is the way it was left.

Mr. Kelaher: Mr. Examiner, before we call a witness, it has been stipulated between counsel as to Mr. Heald, who was a witness yesterday, if he were called he would testify that the F&C Automotive Specialties, Inc., was located at 1201 York Road, Abington, Pennsylvania.

I would like to call Mr. Marabella.

912 JOSEPH MARABELLA was called as a witness for the Commission and, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Kelaher.

Q. Will you please state your name and home address?

A. Joseph Marabella; my home address is 31 King Avenue, Folcroft, Pennsylvania.

Q. Are you associated with V. J. Auto Parts Company?

A. Yes, sir.

Q. And what is your position with V. J. Auto Parts?

A. Partner.

Q. And who is your partner?

A. My brother, Vincent.

Q. And where is your firm located?

A. 1516 Chester Pike, Folcroft, Delaware County, Pennsylvania.

Q. Have you always been at that location?

A. No, sir. In March of '56 we moved from 111 Sharon Avenue, in Sharon Hill.

Q. And when did your firm begin business?

A. January 2, 1951.

Q. And you were at 111 Sharon Avenue from that time until—

A. Until March of '56.

Q. And from March of '56 to date you are at the 913 present location.

A. Yes, sir, at the present location.

Mr. Thompson: Mr. Kelaher, would you mind identifying where Folcroft is? Is that in Delaware County?

The Witness: It is in Delaware County; it is on the Chester Pike.

Mr. Thompson: Thank you.

By Mr. Kelaher:

Q. Would you please describe the principal products sold by your company?

A. Yes, sir.

Well, the biggest percentage is hard parts. By that I mean the mufflers, tail pipes, ignition, and so forth, and then our next biggest line is our chemical or what would be referred to as TBA items.

Q. Do you carry batteries?

A. Yes, sir.

Q. What brand?

A. Delco batteries.

Q. And what items in the chemical line do you carry?

A. Your DuPont line; simonize; Johnson products; Bars Leak, which is one of our biggest items, we are distributor on it.

Q. Spark plugs?

A. Yes, sir. A. C., Auto Lite.

Q. Do you sell filters?

914 A. Yes. Fram and AC.

Q. Do you sell belts and hoses?

A. Yes, sir. We are distributor on the Raybestos line.

Q. Tires?

A. Yes, sir, tires and tubes.

Q. What brand of tires?

A. The Mansfield tires and L&D tubes.

Q. Who makes the L&D tubes?

A. The Mansfield people do.

Q. Is that the Mansfield Tire and Rubber Company of Mansfield, Ohio?

A. Yes, it is.

Q. In what area does your company solicit business?

A. Well, we cover thoroughly 10-mile radius of the store.

Q. And where would—would you describe that in more detail?

A. Well, first of all, the store is midway between Philadelphia and Chester and it would take in, I'll say, 75 percent of Delaware County; all of your Upper Darby area and all of your Chester area through Springfield.

Q. Do you stay solely in Delaware County?

A. No, we solicit business in North Philadelphia, and South Philadelphia, and so forth. Those are fellows who have given us the backbone of our business from the time we started out.

Q. I see.

915 A. But the biggest percentage of our business comes from that 10-mile radius right in Delaware County.

Q. And how many salesmen are employed by your company?

A. Two, sir.

Q. And does that include yourself?

A. That includes myself, yes, sir.

Q. And aside from yourself, how is your other salesman compensated?

A. Salary and commission; expenses.

Q. You have delivery trucks?

A. Yes, sir.

Q. How many.

A. Three trucks.

Q. And is your company generally competitive as to price, quality and service with other sellers of TBA products?

A. Yes, sir.

Q. Now, would you please describe the classes of customers to whom you sell?

A. Car dealers, fleets, independent repair shops and service stations; contract and lessees.

Q. Are there any Atlantic service stations in your company's marketing area?

A. Yes, sir. I would say, oh, 25 to 30 in the area.

Q. Of that number do you know approximately how many own their own stations?

916 Mr. Thompson: I didn't hear the answer to the first question.

Mr. Kelaher: Of that number—you didn't hear the answer?

Mr. Thompson: The answer to the first question.

The Witness: I believe there is 25 to 30 Atlantic stations in that area that we actively solicit.

By Mr. Kelaher:

Q. Of that number do you know how many own their own stations?

A. To my knowledge I would say no, but I do know of

three who do, and there may be more. But I do know positively three.

Q. Three of the 25 to 30?

A. Yes.

Q. And are the remainder company-owned stations?

A. Yes, I believe so, to my knowledge.

Q. Do you solicit business from Atlantic service stations?

A. Yes, sir; actively.

Q. And how frequently do you solicit such business?

A. Those fellows in our trading area are called on once a week.

Q. Do you call on all the 25 to 30 you have mentioned?

A. Yes, sir; every one in our area is actively solicited every week.

Q. What products do you sell to Atlantic service stations?

A. Well, there is a big problem. They will call us 917 for a nut and a bolt. We will deliver it. We sell primarily hard parts, but items that are to eventually end up on their shelves as stock, that is just only on a fill-in basis.

Q. Do you sell TBA items to Atlantic service stations?

A. No, sir, only on a fill-in basis.

Q. And are TBA items customarily stocked on the shelves or displayed on the shelves?

A. Yes, sir.

Q. And did you at one time solicit the business of Atlantic lessee dealer, Elmer Booz, Wycombe and McDade Boulevard, Darby, Pennsylvania?

A. Yes, sir, I did myself.

Q. Were you able to sell him TBA items?

A. For a period we were able to sell him some AC oil filter cartridges; that was the extent of the TBA that we

were able to sell Elmer, and that went on I'd say for a five or six month period, and he in turn informed me that he could not buy any more from us.

Mr. Thompson: Just a minute. I move the last answer be stricken on this ground: Mr. Booz has testified in 918 this case. The only possible relevance of the question and answer would be to ascertain Mr. Booz's state of mind. Had Mr. Kelaher desired to ascertain that fact, he could have asked Mr. Booz.

Hearing Examiner Kolb: The objection will be overruled.

Mr. Kelaher: Would you read Mr. Marabella's answer, please?

(Answer read.)

Mr. Correa: I move to strike the answer, if your Honor please, on the grounds stated by Mr. Thompson, and it is patently unresponsive to the question.

Hearing Examiner Kolb: Overruled.

By Mr. Kelaher:

Q. At or about what time did Mr. Booz start purchasing AC oil filter cartridges from you?

A. Spring of 1954.

Q. And do you recall the conversation you had with Mr. Booz at that time?

A. To a certain extent, yes.

Q. Would you state the conversation?

Mr. Correa: I object to the conversation, if your Honor please, on the grounds stated by Mr. Thompson, and on the additional ground that counsel apparently is seeking to impeach a witness whom he has offered and for whose 919 credibility he has vouched, because I could conceive of no other purpose of the question he has now put to the witness.

Mr. Kelaher: Just so the record will be clear, we are attempting to confirm the testimony of Mr. Booz.

Hearing Examiner Kolb: The objection will be overruled.

A. Well, as was my usual practice, I would go in and on items that Elmer stocked, would try to solicit his business, and at this particular time I went back in and checked his oil filter cartridges, and I saw he was low on some numbers. I marked them down and proceeded to try to obtain an order on the cartridges. Elmer said, "Well, Joe, I am sorry, but I must discontinue buying those cartridges from you." Well, I said, "Well, gee, you have been buying them for a short period of time, I realize. Would you mind telling me why?" He says, "Well, I am getting some pressure and that is as far as I can go."

Q. Did he say who was applying the pressure?

A. He said it was coming from Atlantic Refinery.

Q. And do you know who the supplier was who then sold him AC filter cartridges?

A. I believe it was the TBA distributor in the area, Mr. Parris.

Q. Now, did you sell an item called Bars Leak to Mr. Booz?

A. Yes, I did.

920 Q. And did you ever have any conversations with him with respect to Barsleak?

A. Yes, I did.

Q. Would you state the approximate time of the conversation?

A. Well, that was about the same time, which was in the Spring of 1954. Elmer had been buying it and doing a nice job on it. He had bought three or four cases and sold it. So I noticed that he was low on that, and I asked him, how about another case of Barsleak for stock, and he proceeded to tell me that if he bought it he would have

to put it in the back room. He couldn't display it any more because he was told by his Atlantic representative, salesman, to take it off the shelf and only put the line which was carried by Atlantic on the shelf.

So he said, "If I have to hide it in the back room, I would lose half of its salability, so why should I continue to buy it?"

Q. Was Mr. Booz carrying the Goodyear TBA line?

A. Yes, sir.

Q. Did you attempt to sell tubes, or DuPont chemicals to Mr. Booz?

A. Why on the tubes, I had given that up as a bad job, but the DuPont chemicals, yes. And all we ever got on the DuPont chemicals from Elmer was, as I refer to, we refer to in the business as fill-ins, where he needed a dozen 924 or a case of an item. We could not get any spring or fall orders.

Q. Did he ever give you any reason for not purchasing?

A. Yes. He told me he had to buy it from Atlantic.

Q. Did you solicit the business of Mr. Iocona, former Atlantic dealer in Secane, Pennsylvania?

A. I myself did personally, yes, sir.

Q. And were you able to sell any TBA items to Mr. Iocona?

A. No, sir. Just as I mentioned, on a fill-in basis.

Q. Did you solicit Mr. Iocona on business on Barsleak?

A. Yes, sir; that was another one.

Q. Did you sell him Barsleak?

A. Yes. I had been selling him Barsleak for, I'd say about a year, and he had been doing a nice job with it. And he also had to stop buying it.

Mr. Thompson: I move the answer be stricken.

By Mr. Kelaher:

Q. Did you have any conversation as—

Mr. Thompson: Mr. Kelaher—

Hearing Examiner Kolb: Read that last sentence.

Hearing Examiner Kolb: The motion to strike is denied.

Mr. Thompson: Your Honor did not hear the sentence to which I objected. It was the sentence before that.

Hearing Examiner Kolb: Read the whole sentence.

(Question and answer read.)

922 Hearing Examiner Kolb: The objection will be overruled.

By Mr. Kelaher:

Q. Did you have any conversations with Mr. Iocóna with respect to Barsleak?

A. Yes, sir.

Q. And what was the conversation?

Mr. Thompson: That is objected to on the same ground I objected to the state of mind testimony about the prior witness, Mr. Booz.

Mr. Correa: And I join in the objection, if your Honor please, and submit this is a perfectly outrageous procedure, calling a witness such as this to testify concerning statements allegedly made by other people who have been called on the witness stand who gave no such testimony whatever.

Now I have never heard of any procedure like that being followed in any court, and I object to it and—

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaher:

Q. I will restate the question.

Did you ever have any conversations with Mr. Iocóna as to why he stopped purchasing Barsleak?

A. Yes, sir; more or less along the same lines as Mr. Booz. He told me he in turn was told to remove it from his shelf.

Q. By whom?

923 A. By his Atlantic representative.

Mr. Thompson: May it be understood, sir, so that I won't be needlessly repetitious, that my objection applies to this entire line of testimony?

Mr. Correa: And may mine also apply?

Hearing Examiner Kolb: It may apply. The objection will be overruled.

By Mr. Kelaher:

Q. Can you state the approximate time of your conversation with Mr. Iocona?

Mr. Thompson: I can't hear you.

(Question read.)

A. Yes, sir. That was also—well, there was two conversations, one was in the spring and then prior to the fall season, anti-freeze season, of '54. Both were in 1954.

By Mr. Kelaher:

Q. And both were connected with the Barsleak?

A. Absolutely, yes, sir.

Q. Did you at one time sell simonize products to Mr. Iocona?

A. Yes, sir.

Q. Can you state the approximate time when such sales were made?

A. Well, that was also in the early part of '54 when we were actively soliciting Mr. Iocona's business.

Q. And did he continue to purchase Simoniz from you?

924 A. He did for approximately, I'd say a three-month period; he had bought one complete order and then informed me that he would have to stop buying Simoniz.

Q. And did he give you a reason why he would have to stop buying Simoniz products from you?

A. The same reason that most of these other fellows

have given us whenever they have stopped buying any merchandise from us, pressure from Atlantic.

Q. Have you attempted to solicit tube business from Atlantic dealers?

A. Yes, sir; myself, I have.

By Mr. Kelaher:

Q. Do you recall, or did you solicit the business of Carmen's Atlantic, South Avenue and Providence Road, with respect to the sale of tubes?

A. No, I myself did not, Mr. Kelaher. That is our other salesman who did that.

Q. Who would that be?

A. Jerry Tarquinio.

Q. Did you yourself solicit the business of any 925 Atlantic dealer with respect to tubes?

A. Yes, I did.

Q. And do you recall any instance with respect to such solicitation?

A. Yes, sir; on the tubes themselves the boys have told me that they would be glad to use us in a back order situation or a fill-in, but they could not give me or our company an order on L&D tubes.

Mr. Thompson: I move the answer be stricken, unless there is identification.

Hearing Examiner Kolb: Mr. Kelaher, I wish you would either follow through with your identification, which I assume you will—

Mr. Kelaher: That is correct.

By Mr. Kelaher:

Q. When you state "the boys," to whom are you referring?

A. I am referring to Jack Chambers; I am referring

to Elmer Booz; I am referring to Andy Iocona; those fellows in particular.

Mr. Thompson: It is understood that the same objection I made before applies to Mr. Jack Chambers, who was also a witness.

Hearing Examiner Kolb: All right.

By Mr. Kelaher:

Q. Such conversations were held with these gentlemen 926 when they were Atlantic dealers?

A. Absolutely; yes, sir.

Q. Have such statements been made to you on more than one occasion?

A. Yes, sir.

Q. And could you fix the approximate time of such statements?

A. Well, Mr. Kelaher, most of this problem that did arise started in the spring of '54, through '55 and '56, up to the present, but the particular instances in my mind, two are in the fall of 1954 with Mr. Chambers and Mr. Booz, Mr. Iocona, you might say the latter part of '54.

Q. And did you solicit Barsleak business from Mr. Chambers when he was an Atlantic lessee-dealer?

A. Yes, sir.

Q. And was he at that time located at Sharon Hill, Pennsylvania?

A. Yes, sir.

Q. And did Mr. Chambers purchase Barsleak from you?

A. Yes, sir.

Q. And what was your experience with respect to the sale of Barsleak to Mr. Chambers?

A. My, well, business relations and experience with Mr. Chambers had been the same as with the other gentlemen I have mentioned, enjoying good business relations, good

sales on Barsleak, up until the time he was told to 927 remove it from his shelf, and he gave me the same answer that the other fellows had given me.

Q. When was that?

A. That was in the fall of 1954.

Q. Now, do you recall who succeeded Mr. Chambers at the Sharon Hill station?

A. A fellow by the name of Crum, Fred Crum.

Q. And did you solicit the Barsleak business from Mr. Crum?

A. Yes, I did.

Q. And what was your experience with respect to that?

A. Well, we succeeded in selling Mr. Crum, and I believe it was two or three cases we had sold him, and he also ran into the same road block. He was told to get it off of his shelf.

Q. And do you recall the approximate date of that conversation?

A. That was in '55, the latter part of '55.

Mr. Thompson: Would you be kind enough, Mr. Kelaher, to proceed with the identification to save me the trouble of moving to strike?

Hearing Examiner Kolb: I will ask counsel to make a motion to strike after he has done that.

Mr. Thompson: Yes, sir, before you rule. If I let a question go by, I have lost the opportunity.

Hearing Examiner Kolb: On this identification, you 928 still have your rights.

Mr. Thompson: You will be lenient then in that situation.

By Mr. Kelaher:

Q. Have you solicited DuPont, Johnson, or Simoniz product business from a Carmen's Atlantic?

Mr. Thompson: I move the testimony with respect to

Mr. Carmen be stricken because of lack of proper identification of the alleged conversation.

Mr. Kelaher: Mr. Examiner, I am continually interrupted; I am giving specific dates, names, products, if counsel can be patient.

Hearing Examiner Kolb: It might save a few objections if you ask if you had the conversation and when you had the conversation, and then the substance of the conversation; that will end all of the objections, rather than getting the time after the witness has testified what the conversation was.

Mr. Thompson: That is right.

Mr. Kelaher: Well, I would do that if I am first permitted to lay a foundation for the questions..

Mr. Thompson: Have you departed from Mr. Crum? Because you laid no foundation for his alleged state of mind.

Mr. Kelaher: I thought that was sufficiently covered.

By Mr. Kelaher:

Q. Are you familiar with, or did you solicit the 929 business of a Carmen's Atlantic, and if so, would you please state the location of the station?

Mr. Thompson: May I renew my motion to strike the alleged statements of one Mr. Carmen for lack of proper identification?

Hearing Examiner Kolb: I believe he said the conversation took place in 1954, did he not?

Mr. Thompson: I think—I do think he said sometime in 1954; there was no identification.

The Witness: 1955.

By Mr. Kelaher:

Q. Mr. Marabella, would you please state when your conversation with Mr. Crum took place?

A. 1955.

Mr. Thompson: May we have where?

The Witness: In Sharon Hill.

By Mr. Kelaher:

Q. Where is the station?

A. Sharon Hill.

Q. Location?

A. Clifton Heights and Chester Pike, in Sharon Hill, Fred Crum's Atlantic.

Q. And will you give us the location of Carmen's Atlantic station?

A. Carmen's Atlantic, South Avenue and Providence Road, Secane, Pa., Delaware County.

Q. Did you solicit TBA business from Carmen's Atlantic?

A. I did, yes, sir.

Q. And would you please state what your experience has been; if you had any conversations, when they took place and if they took place, the location of the conversation.

A. Yes, sir.

I had a conversation with Carmen in the spring of 1956 in his station, South Avenue and Providence Road, in Secane, concerning the spring program for DuPont chemicals. Carmen told me himself he would like very, very much to give me the order but that he had already been solicited by Atlantic and he had been more or less forced to promise them the order. I asked him to elaborate and he came out with the same thing that everyone else has come out with, which is pressure.

Q. Are you familiar with the location of Don Elko's Atlantic station?

A. Yes, sir.

Q. And where is that located?

A. That is the station at Clifton Avenue and Chester

Pike in Sharon Hill, that has had three or four dealers since it was built.

Q. Now, at the time Mr. Elko was there, please state whether or not you solicited TBA business from Mr. Elko; whether or not you had any conversations with Mr. Elko with respect thereto, and if so, the approximate dates 931 of the conversations and the locations of the conversations.

A. Well—

Mr. Thompson: I congratulate you, Mr. Kelaheer, that is a splendid question.

A. Very frankly, on that particular account, it is covered by our other salesmen, but I myself had a personal contact, personal solicitation on the TBA item, namely Delco batteries, in January of this year, 1957; that took place in Don Elko's station. I solicited along with the Delco battery man his battery business, and he just threw up his hands. He said, "Joe, I would like to buy the batteries from you, but you know what I have been running into and what every other Atlantic man has been running into. I cannot put anything but a Goodyear battery in this place. If I don't have a battery I will be more than glad to buy it from you because I know you can give me the service and the price is right."

By Mr. Kelaheer:

Q. Now, I take it you were unable to sell Delco batteries to Mr. Elko?

A. Absolutely.

932 By Mr. Kelaheer:

Q. Did you at one time solicit the Bars Leak business from Mr. Elko? If so, please state when such solicitation took place; whether or not you made such sales; whether or not you had any conversations with Mr. Elko. If such

conversations were held, the approximate date of the conversation and the approximate location of the conversation.

Mr. Correa: I submit, your Honor, that is not a question; it is a questionnaire.

Mr. Kelaher: We would be very happy to save the time, Mr. Examiner—

A. Mr. Kelaher, I make it a practice to call on a fellow when he takes over a new station, no matter what company he is with. And I went out to see Mr. Elko the latter part of January, 1957. I acquainted him with the 933 prices of the various products that he had on his shelf, and I also solicited actively in his station on Clifton Avenue and Chester Pike in Sharon Hill, the sale of Bars Leak. He bought it and re-ordered. He was also told by his Atlantic representative to take it off the shelf. He refused and told the Atlantic man that it was better than the other product, and he was going to continue to keep it on the shelf, and to this day he still has it on his shelf.

By Mr. Kelaher:

Q. Could you give us the approximate date of your call on Mr. Elko when he opened the station?

A. That particular—that was not the opening of the station, that was in the latter part of January of '57, which was on this Bars Leak.

Q. I see.

A. And he had already opened.

Q. I see.

A. See, that particular account is in my other salesman's territory but I make it a point to go out and have personal contact in the, you know, near future, when a fellow has opened a station and go out and introduce myself and so forth.

Q. you stated that you sell Delco batteries. In what category or what category distributor are you for Delco?

A. Why, we are a warehouse distributor on Delco batteries; we received that distributorship in January, 1957.

934 Q. And do you purchase such batteries direct from the company itself?

A. United Motors, yes, sir.

Q. And as a wholesale distributor, what lots do you purchase in?

A. Three, four, five hundred at a time.

Q. Have you attempted to sell Delco batteries to John Branca, Yeadon, Pennsylvania?

A. No, I did not solicit that, that was solicited by my other salesman.

Q. And did you as a result of any conversations with Mr. Branca—

A. Not particularly on that, no.

Q. Did your company sell Delco batteries to Mr. Branca?

A. Not on a stock basis, no, sir.

Q. And did your salesman report to you the reasons why he was not selling on a stock basis?

A. Yes, sir.

Q. What did he report?

A. Only stocking Goodyear batteries; that was also in January of '57. We worked the whole week with the Delco battery representative.

Q. Have you attempted to sell, or have you solicited TBA business from new Atlantic service stations or Atlantic service stations with new operators?

935 A. Well, as I said, we do make it a practice of going out to these boys whether they are a new operator or—I mean a new station or a new operator taking over an old location, but all the initial order of stock or merchandise that would go on the shelf does come from Atlantic. We ourselves cannot break in on that.

Q. When you say it comes from Atlantic are you referring—

A. TBA distributor.

Q. Is that Mr. Parris in all these instances?

A. In all these instances in our area, yes, sir.

Q. And the stations you have reference to is, what type of identification is on the station, as to outdoor signs?

A. Well, the Atlantic and the Goodyear signs.

Q. Approximately how many Sinclair stations are in your area?

A. Twelve to 15, sir.

Q. And do you solicit the TBA business of Sinclair stations?

A. Yes, sir, actively.

Q. What has been your experience with respect to such business?

Mr. Correa: I object to that question, if your Honor please, that is too general.

By Mr. Kelaher:

Q. Well, have you solicited the business of a George Kaiser?

A. Yes, sir.

936 Q. And where is Mr. Kaiser located?

A. Mr. Kaiser is at Glenolden Avenue and Chester Pike, in Glenolden, Pennsylvania.

Q. And have you had any conversations with respect to the sale of TBA with Mr. Kaiser? If so, please give us the approximate time of the conversation, and the details of the conversation and so forth, and what type of a station does Mr. Kaiser operate.

Mr. Thompson: May it be understood, sir, that this testimony is taken subject to the Commission's ruling about Atlantic's later right to move to strike?

Hearing Examiner Kolb: Is this a Sinclair station?

Mr. Thompson: Yes, sir.

Mr. Kelaher: Yes, sir.

Hearing Examiner Kolb: It will be received subject to a motion to strike on the part of Atlantic.

The Witness: Well, it's been identified that it is a Sinclair station.

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938 By Mr. Kelaher:

Q. Have you had any conversations with Mr. Kaiser—let me put it this way: confining your answers solely to accessories and not to batteries, of not to tires or tubes, have you had any conversations with Sinclair dealers with respect to the sale of accessories do you recall?

A. Well, when you say "accessories," are you referring to the chemical end of it?

Q. Yes.

.

By Mr. Kelaher:

Would you please give us specific dates and conversations with Sinclair dealers?

A. Yes, sir. This spring, 1957, with George Kaiser, Sinclair, Glenolden Avenue and Chester Pike, Glenolden, I actively solicited his DuPont spring chemical order. He told me that he would like to give it to me, he would give me some fill-in business, but he'd been more or less
939 forced to promise it to the TBA distributor for Sinclair in the area and he also told me that they had a free merchandise program which we as a DuPont jobber did not have access to. Now, whether that was the TBA distributor's own deal or not, I don't know.

Q. Now, who was the TBA supplying dealer for Sinclair stations in your area?

A. Superior Tire.

Q. Do you happen to know their approximate location, what city they are in?

A. They were in Upper Darby on Garrett Road, but I believe they have moved. Their exact location now I do not know, sir.

Q. Do you recall any other conversations of a similar nature with other Sinclair dealers?

A. Chamberlain's Service at the same time, Chamberlain's Sinclair Service, Gardner Avenue and MacDade Boulevard in Glenolden, spring of this year, 1957, I spoke to Bob Chamberlain soliciting his DuPont order for the spring chemicals and he more or less told me, practically verbatim, the same thing.

Q. The same thing as Mr. Kaiser?

A. Practically the same thing as Mr. Kaiser.

Q. Do you recall any other Sinclair dealers with whom you had similar conversations?

A. Al and Gene Radewon, Morton Avenue and MacDade Boulevard.

940 Q. Would you give us the approximate time and other details?

A. That also was at the same time, this all happened in 1957, and I did succeed in selling him one case of merchandise but I also had to give him two free cans of DuPont chemicals in order to meet the competition that was put up by the TBA distributor.

Q. Now, did all these conversations take place at the station locations of these various dealers you referred to?

A. In the office of the station location itself.

Q. And did the conversations with the Atlantic dealers you have named—

A. (Interposing.) Yes, on the property, the location of the station.

Q. What has been your experience with respect to the sale of Mansfield tires in Atlantic stations?

A. Just on a fill-in basis, no stock orders whatsoever.

Q. And have any reasons ever been given you by Atlantic dealers for buying on a fill-in basis?

Mr. Thompson: Please go on and state the rest of the question.

A. Yes, sir; there's definite reasons given.

By Mr. Kelaher:

Q. Now, would you give us the details and I will state it briefly: Give us the details as to such conversations.

A. Well, in the latter part of 1954 with Mr. Booz, 941 Elmer Booz, Wycombe Avenue and MacDade Boulevard in Darby, I along with a Mansfield tire representative went in to solicit some of Mr. Booz' tire business. He said, "Joe, I'd be glad to buy them on a fill-in basis, but you know I cannot put anything in here but Goodyear tires and Goodyear tubes." And that was the extent of the conversation.

Q. Do you recall any other conversations with Atlantic dealers along similar lines?

A. Jack Chambers, we solicited him the same day at his station which was Clifton Avenue and Chester Pike in Sharon Hill, in his office, told us he was sorry to waste our time but more or less the same manner, that he couldn't put anything but Goodyear in there.

Q. Now, you stated that your company sells so-called hard parts. Are you able to sell hard parts to Atlantic stations?

A. Yes, sir; there is a—and that's a situation where the fellows do use us for delivery service, they are now allowed to do minor repairs, consequently they do call upon us for deliveries on mufflers, tail pipes and so forth, and we have no problem whatsoever soliciting their business on that.

Q. And you have no problem in selling them hard parts, is that correct?

A. No, sir.

942 By Mr. Kelaher: What has been your experience with respect to the sale of hard parts to Sinclair service stations?

A. No problem at all on that, sir.

Mr. Thompson: I couldn't understand the question, I'm sorry, would you mind repeating the question?

(The reporter read the question.)

Mr. Kelaher: No further questions, your Honor.

Hearing Examiner Kolb. Cross-examine.

Mr. Thompson: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Cross-Examination by Mr. Thompson.

Q. Mr. Marabella—

A. Yes, sir.

Q. For identification I represent the Atlantic Refining Company in this case and the extremely handsome gentleman across the way represents the Goodyear Company.

Your business has progressed pretty well since you started it in '51 on an over-all basis, has it not?

A. Yes, sir.

943 Q. The gross sales have been increasing rapidly—

A. Yes, sir.

Q. And also your profit, have they not?

A. Not as much as we'd like them to, sir.

Q. Isn't that so of all of us?

A. I don't know.

Q. When were you first interviewed by a representative of the Federal Trade Commission about tires, batteries and accessories?

A. Three months ago.

Q. That was the first time the Federal Trade Commission called on you?

A. Yes, sir.

Q. And that would have been, then, about March of this year?

A. Yes.

Q. Have you discussed your testimony in this case with Jack Chambers, Elmer Booz, and Andy Iacona?

A. I haven't even talked to those fellows.

Q. So you don't know what they testified to when they were on the stand?

A. No, sir.

Q. Did I understand you to say that you can't sell orders for stocking of accessories at any of the Atlantic stations?

A. Yes, sir.

Q. You solicit them all, do you?

944 A. In our trading area, yes, sir.

Q. Does your trading area go out as far as Lynwood?

A. No, sir.

Q. I suppose that it obviously covers MacDade Boulevard?

A. Yes, sir.

Q. Do you solicit Ed Holmes?

A. Yes sir.

Q. Does he stock your accessories?

A. Ed Holmes, isn't he a contract station?

Q. I'm asking the question, Mr. Marabella. My question was whether you solicited him and whether he stocked your accessories which he bought from you?

A. When you speak of accessories you are referring to chemicals, sir. No, he does not buy those from me.

Q. How about Mansfield tires?

A. No, sir.

Q. Hard parts?

A. Yes, sir.

Q. Is he one of the Atlantic dealers who said that because of pressure he couldn't buy accessories from you or tires?

A. No, sir.

Q. Did he ever make any such remarks at all?

A. No, sir.

Q. Now, why can't you sell him tires and why can't you sell him accessories?

945 A. On the tubes I sell Mr. Holmes. I sell Mr. Holmes tubes.

Q. Why can't you sell him accessories?

A. Well, I believe that Mr. Holmes is a pretty fair minded man and he splits his business up.

Q. Among a lot of—

A. Jobbers.

Q. Among a lot of jobbers?

A. Yes, sir.

Q. Don't a great many of the Atlantic accounts do precisely that?

A. Not on TBA items, sir.

Q. Why not?

A. I wish I knew the answer to that.

Q. You don't know why Mr. Holmes doesn't buy TBA from you?

A. No, sir.

Q. He's never given you any reason?

A. I have never actively solicited too much of his TBA.

Q. Does he buy from Ed Parris, do you know?

A. That I couldn't tell you, sir.

Q. As a matter of fact, you can't tell us whether any of these Atlantic dealers buy from Ed Parris, can you?

A. Oh, yes I can.

Q. How?

A. I see invoices.

946 Q. You mean the dealers show you the invoices?

A. No. The invoices are laying on the desk just like in any other business.

Q. Just laying on the desk?

A. That's all.

Q. Well, who else besides yourself does sell TBA to Atlantic dealers in your sales territory? Who are your competitors?

A. Well, as far as competitors go, whether or not they sell TBA to Atlantic, I don't know. You have got Auto Parts and Radiator, with a branch store in Folcroft, the main store in Chester; E. B. Krausen in Chester. You have got Chester Auto Parts; you have got Motor Parts Service in Norwood; Prospect Park, rather; you have got Clifton Automotive, Clifton Heights, Pennsylvania, all actively soliciting in the area plus all the Philadelphia jobbers who travel out to the Chester Pike area, Gaul, Derr and Shearer.

Q. In—by and large do all of those dealers call on all of those stations?

A. Yes, sir.

Q. There must be a parade of jobbers into a station every day.

A. I have had it said to me that's all they do, is interview salesmen all day long.

Q. I have had it said to me, too, Mr. Marabella.

Chester Auto Parts, did you mention that, Mr. Wet-
947 zell's Company?

A. Yes, sir.

Q. Does your sales area go out as far as Morton?

A. Yes, sir.

Q. How about Walter McCullough. Do you solicit his account?

A. Yes, hard parts.

Q. Is that all you get from him?

A. That's right.

Q. Did he ever tell you why he doesn't buy tires, batteries and accessories from you?

A. Never personally, because I don't call on him.

Q. Your other salesman does, but your firm has never been able to sell him anything except hard parts?

A. We have sold occasionally on the chemicals, on fill-in, but never what you would call a stock order, or batteries once in a while for delivery.

Q. Has your salesman ever reported to you why Mr. McCullough doesn't buy TBA from you?

A. Sir, I have never really asked him why because I only have so many hours in a day and I have more or less resigned myself to the fact that unless, I don't think we'll ever sell Atlantic TBA so I don't even bother.

Q. Do you think Atlantic puts pressure on Mr. McCullough?

A. I don't know. I don't know what his status is.

Q. Except for fellows like Chambers and Hill and '948. Booz, do you really know the status of any of the people you have talked about?

A. Elko, Don Elko, he's a lessee.

Q. You mentioned him.

A. George Hill who was down on MacDade Boulevard in Darby is a lessee.

Q. He's an old friend. He's been here.

A. Sam Dubrow's in Darby, he's a lessee.

Q. You mentioned him, didn't you?

How about your relationship with the Minka Brothers station down in Chester. Where is that, Sixth and Morton?

A. Yes, sir; but we don't do anything about that.

Mr. Kelaher: Which was that?

Mr. Thompson: Minka—M-i-n-k-a.

By Mr. Thompson:

Q. Do you solicit that account?

A. Yes, sir. Actually they are right in the heart of

three or four jobbers down there, and very frankly it would be foolish for those fellows to buy from us.

Q. They can get service right next door?

A. Yes, sir.

Q. Now, how about Sharon Hill Garage. That is a pretty big outfit?

A. Yes, sir.

Q. Do you deal with them?

949 A. Yes, we do.

Q. Do you sell them TBA?

A. Occasionally, yes.

Q. Do they stock Mansfield tires?

A. No, sir.

Q. Do they stock any of the accessories bought from you?

A. They do, but it's more or less as I mentioned on a fill in basis. Most all of his TBA is on a—as I mentioned—it's more or less a fill-in basis from us. We get no stock orders from him at all, other than hard parts.

Q. Mr. Marabella, I have forgotten who is running that Sharon Hill parts—

A. Tom.

Q. Do you remember his last name.

A. I can't pronounce his last name, it's an Italian name.

Q. Can you spell it?

A. I can't spell it either.

Q. Tom something-or-other?

A. I'm Italian and I can't pronounce it.

Q. Do you call on him personally?

A. No, the other salesman solicits him.

Q. You don't know of your own knowledge why he doesn't stock your TBA items?

A. Not of my own knowledge, no.

Q. Have you had reports from your salesman?

950 A. Yes.

Q. What were the reasons reported?

A. Well, he tries to—as I said, I don't know what his status is, but he does try to identify himself, through what I have found myself with Atlantic and Atlantic TBA items.

Q. And you mean on Goodyear when you say Atlantic TBA items?

A. On some items, as I say I have only been down there to talk to him once or twice and other—the other salesman contacts him.

Q. I see.

How about Pachel out at Morton, is he one of your customers?

A. No, the other boy contacts him.

Q. Do they stock or buy TBA from you?

A. No, sir; not from us; hard parts, yes.

Q. Has it been reported to you why?

A. No, sir.

Q. There has been no report to you of any Atlantic pressure on that account?

A. No specific report to me; no, sir.

Q. But nevertheless they don't stock your TBA, do they?

A. That's right, sir.

Q. Do you go out as far as Boothwyn?

A. No, sir.

Mr. Kelaher: Could I have that question reread?
951 (The reporter read the question.)

Mr. Kelaher: Would you mind identifying that in some way. We are strangers to Philadelphia and—

Mr. Thompson: Have you heard the answer? Perhaps you will lose interest when you hear the answer. The answer was "no."

Mr. Kelaher: I have lost interest.

By Mr. Thompson:

Q. Mr. Marabella, you referred to a store, do you people retail as well as wholesale? Do you sell over the counter at the store?

A. No, sir.

Q. So that the store is what, really headquarters, warehouse?

A. That's right, sir.

Q. By the way, are you selling Elmer Booz TBA now?

A. To a certain extent down there, yes.

Q. Is he stocking Mansfield tires?

A. No, sir; he's stocking tubes.

Q. Stocking tubes, and how about accessories?

A. Yes, sir.

Q. Buying them from you?

A. I would like to elaborate one minute. When you asked about Mansfield tires, he's not stocking and none of these boys are, because I gave up the Mansfield line.

Q. When did you do that?

952 A. Two years ago, sir; the latter part of 1955.

Q. That's quite enlightening. I didn't realize that from your prior testimony.

A. All I did was get rid of what I had on hand.

Q. Did you take on another tire line?

A. No, sir.

Q. Now, you have three trucks which service an area which I understand to be a radius of about ten miles from your store?

A. Yes, sir.

Q. Do those three trucks provide adequate delivery service?

A. During the Pennsylvania state inspection period, which is at present, I have to get another truck.

Q. In other words, to do a job out there you would require about four trucks?

A. I would need another truck.

Mr. Kelaher: I beg your pardon. What was your answer?

The Witness: The way it's been so busy we'll need another truck.

By Mr. Thompson:

Q. You couldn't handle that business with one truck, could you?

A. Absolutely not.

953 Q. How about with just one station wagon?

A. No, sir.

Q. You'd be broke, wouldn't you?

A. Yes, sir.

Mr. Thompson: That's all I have.

954 By Mr. Correa:

Q. Now, Mr. Marabella, you spoke of Mr. Iacona, and you said you sold what to Mr. Iacona?

A. Specifically hard parts, Bars Leak, which is a cooling system sealer.

Q. And what else?

A. And occasional fill-ins on various items of the TBA or what have you.

Q. Did you sell him tires?

A. No, sir.

Q. Did you sell him batteries?

A. Occasionally, when he needed a battery.

Q. Referring to the year 1953, did you solicit Mr. Iacona that year?

A. I did myself personally.

Q. You did?

A. Yes, sir.

Q. Did you attempt to sell him tires?

955 A. No, sir.

Q. Do you know what tires he stocked during that year?

A. No, sir; I do not.

Q. You were in his place of business around the time?

A. Yes, sir.

Q. You didn't happen to see his invoices?

A. No, sir.

Q. He kept them in the drawer of his station?

A. I might clarify that, sir. I can just see the top of the name of whose ever invoice it is, I don't make it a practice to go down and check prices or quantities of merchandise.

Q. Whatever your practice in the case of Mr. Iacona you didn't see his invoices?

A. Where he was buying his tires?

Q. Yes, sir.

A. No, sir.

Q. And you don't know?

A. No, sir.

Q. And you didn't try to sell him?

A. No, sir.

Q. You were selling Mansfield tires at the time?

A. Very, very few.

Q. Weren't you able to deliver as many as you could sell?

A. Not in '53; no, sir.

Q. Not in '53. So, you didn't want to sell him
956 tires in 1953?

A. Let's say maybe I didn't want to go round and round with Mr. Iacona in 1953.

Q. Did you take a look around his place to see what kind of tires he was stocking in 1953?

A. Very truthfully, sir. I couldn't tell you what type of tires he was stocking in 1953.

Q. Now, you said you did sell him an occasional battery in 1953, is that right?

A. Yes, sir; when it would be an odd battery that he did not carry in stock.

Q. What kind of batteries did you sell him?

A. Delco. We were a contract jobber at that time before we became a warehouse distributor.

Q. What kind of batteries was Mr. Iacona stocking in 1953?

A. I wouldn't truthfully know. I think that he was carrying some, I believe, Goodyears, sir.

Q. Is he stocking anything other than Goodyear?

A. Not to my knowledge.

Q. Would it help your recollection if I told you that Mr. Iacona testified here the day before yesterday that in the spring of 1953 he started putting in Delco batteries?

A. Well, I don't know who he was buying them from for stock, I can tell you that. I was getting the fill-in business for an odd job if he didn't have one on the shelf.

957 Q. Do you know whether or not he was buying the Delco batteries from Ed Parris?

A. That I couldn't tell you, sir.

Q. Did you make any effort to sell Mr. Iacona Delco batteries on a stocking basis in 1953?

A. I myself did. Yes, sir.

Q. What did he tell you?

A. Sticking with Goodyear. I know that I went in there myself every week up until the time Mr. Iacona left that location and I can truthfully say that he may have had them, if he did have the Delco batteries as you say he didn't have them on display.

Q. Not as I, as he says.

A. As Mr. Iacona says.

Q. I don't know what he said—

Mr. Kelaher: May we have the reference to the testimony?

Mr. Correa: Yes, sir. 659.

Mr. Kelaher: Thank you.

By Mr. Correa:

Q. Now, sir, did you sell Mr. Iacona in 1953 all the Delco batteries he bought on any basis, fill-in, stocking or what ever?

A. Did I?

Mr. Kelaher: Objection, your Honor; he would have 958 no way of knowing.

Mr. Correa: Well, if he knows.

Hearing Examiner Kolb: This is cross examination.

Mr. Kelaher: Certainly.

Mr. Correa: If he knows. That, I may say, is to be understood on all of my questions.

Mr. Kelaher: I think that the qualification should be stated orally in this type of question.

Mr. Correa: I think it should be clear.

The Witness: All I can say is he called us for a battery on a specific job. To my knowledge, as far as I can recollect, Mr. Iacona never bought any Delco batteries from me for stock.

By Mr. Correa;

Q. Did he buy them from any of your competitors?

A. That I couldn't tell you.

Q. Specifically do you know whether or not he bought them from Gaul, Derr, and Shearer?

A. I could not tell you, sir; I don't know.

Q. Now, sir, you have stated with respect to Sinclair stations that in the spring of 1957 you solicited George Kaiser to sell him some chemicals, was it?

A. Yes, sir.

Q. And you said that he told you he couldn't buy them from you because he had already promised to buy them 959 from, I think you said the Sinclair distributor was the way you put it.

A. Yes, sir.

Q. And also that he referred to a free merchandise program which was being offered by the Sinclair distributor?

A. Yes, sir.

Q. And I gather you were not offering a similar program?

A. It wasn't available to us.

Q. Well, didn't you tell us that you didn't know whether that was the distributors program or one—

A. (Interposing.) I did say that, sir.

Q. (Continuing.) —made available by—

A. (Interposing.) To my knowledge it wasn't with Johnsons, it wasn't with Simoniz, and it wasn't with DuPont.

Q. But you don't know whether or not that was the distributor's program?

A. I personally believe—

Q. (Interposing.) I'm not interested in your belief, I want your knowledge, sir.

A. I'll say specifically that it was the distributor's program because the merchandise was delivered with the free merchandise.

Q. Now, you said that at about the same time you also solicited a Mr. Chamberlain?

A. Yes, sir.

Q. And that he told you practically the same thing 960 as Kaiser?

A. Practically verbatim.

Q. Did he refer as well to the free merchandising program?

A. Yes, sir.

Q. And you said you sold to Al and Gene Radewon on the basis of giving them something free?

A. Two free cans; yes, sir.

Q. And that you had to do in order to meet the competition?

A. Yes, sir.

Mr. Correa: I have no further questions.

Hearing Examiner Kolb: Any further questions?

Mr. Kelaher: May we have a minute, your Honor?

Hearing Examiner Kolb: Any further questions?

Mr. Kelaher: Yes, I just have a few.

Redirect Examination by Mr. Kelaher.

Q. Mr. Marabella, you were asked on cross examination if your gross sales had increased during the period since you began business in 1951?

A. Yes, sir.

Q. Have your sales increased with respect to the sale of TBA items to Atlantic service stations?

A. Specifically, no, sir.

Q. So, the gross sales increase is not due at all to any increase in sales of TBA to Atlantic service stations?

961 A. No, sir; there's other factors involved. There's price increases, naturally, which puts your sales up.

Q. Have you increased your sale of hard parts?

A. Very much so, sir.

Q. And does that account primarily for your increase in gross sales?

A. That is the biggest factor but as I mentioned the price increases is a factor and also buying merchandise on a direct basis; in other words, not paying a premium to another distributor which gives us a greater profit margin.

Q. Such as on Delco batteries?

A. Yes, sir.

Q. You were asked on cross examination to give the names of various competitors. I noted that you did not mention the name of Mr. Parris. I would like to ask you whether Mr. Parris competes with you in your whole trading area?

A. As far as the Atlantic stations go, sir, when we speak of competitors I have about given up as far as the TBA goes on some of these other items and I speak of hard parts competitors.

Q. I see.

962 By Mr. Kelaher:

Q. Reference was made in cross examination to a Sharon Hill Garage. Do you know whether or not that is owned by the gentleman with the unpronounceable name, or whether it's a leased station?

A. To my knowledge it's not a lease operation; in fact, I believe it's a Mr. Lewis owns the building.

Q. And as the name would seem to indicate, is that primarily a garage for repair of automobiles?

A. Yes, primarily.

Q. Now, with respect to Mansfield tires, you stated on direct that you at one time—and I understood you to say that you were handling Mansfield tires to date—but you stated on cross you discontinued them. When you began business did you begin to handle Mansfield tires?

A. Not immediately.

Q. When did you begin handling them?

A. In 1952.

Q. Do you recall what part of '52?

A. I would say the spring of '52.

Q. And you continued to handle them until when?

963 A. Well, up until we sold our inventory out which was just up until the end of this spring.

Q. Until the spring of 1957?

A. Yes.

Q. I see.

Now, on cross examination you stated that you discontinued, did you say buying Mansfield tires in 1955?

A. Yes. That's when the contract terminated, the latter part of '55.

Q. But you had some Mansfield tires in stock that you continued to sell until—

A. Quite a few of them.

Q. And that stock was not depleted until the spring of 1957?

A. Yes, sir.

Q. Now, I would like to ask you about tubes. When did you begin to handle tubes?

A. Well, about the same time that we started handling tires.

Q. And do you still purchase tubes for resale?

A. Yes, sir.

Q. And I think you mentioned the brand name as L & D, is that correct?

A. Yes, but it's made by the Mansfield people.

Mr. Kelaher: No further questions, your Honor.

Mr. Thompson: No question.

Mr. Correa: No further questions.

964 Hearing Examiner Kolb: That's all, Mr. Marabella.
Thank you.

(Witness excused.)

Mr. Kelaher: May we have a short recess, your Honor?

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

965 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: I would like to call Mr. Lanza.

